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IN THE

Supreme Court of the United States

October Term, 1962

No. [redacted] 138

IN THE MATTER OF THE APPLICATION
of
WATERFRONT COMMISSION OF NEW YORK HARBOR, to punish WILLIAM MURPHY for failure to obey a Subpoena.

WILLIAM MURPHY,
Petitioner,

—v.—

THE WATERFRONT COMMISSION OF NEW YORK HARBOR,
Respondent.

IN THE MATTER OF THE APPLICATION
of
WATERFRONT COMMISSION OF NEW YORK HARBOR, to punish JOHN MOODY, SR., for failure to obey a Subpoena.

JOHN MOODY, SR.,
Petitioner,

—v.—

THE WATERFRONT COMMISSION OF NEW YORK HARBOR,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

Petitioners, John Moody, Sr., and William Murphy pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of New Jersey, entered in the above entitled case March 4, 1963.

Citations to Opinion Below

The opinion of the Supreme Court of the State of New Jersey, printed in Appendix "A" hereto, *infra*, is reported at 39 N. J. 436, 189 A. 2d 36. The oral decision or opinion of the Superior Court of New Jersey, Law Division, Hudson County, is unreported and is printed in Appendix "B" hereto, *infra;* it is also printed in the "Appendix to Appellants' Brief", pages 213a-236a, which was captioned below in the "Superior Court of New Jersey, Appellate Division", all available extra copies of said printed appendix being filed in this Court together with the instant petition. We also print in our Appendices hereto, *infra*, the following opinions, rendered in a companion or connected case involving the same parties and an earlier stage of the same proceedings and subject matter: (1) the opinion of the Supreme Court of New Jersey reported at 35 N. J. 62, 171 A. 2d 295 (Appendix "C", *infra*), (2) the oral opinion of the Superior Court of New Jersey, Law Division, Hudson County, rendered June 17, 1960, unreported (Appendix "D", *infra*).

Jurisdiction

The judgment of the Supreme Court of the State of New Jersey was entered March 4, 1963 (Appendix "E", *infra*). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3), since the petitioners are claiming rights, privileges or immunities under the Constitution and under certain statutes (as recited *infra*) of the United States.

Questions Presented

The Waterfront Commission of New York Harbor, a bi-State agency established under an inter-state compact, sub-

poenaed the petitioners Moody and Murphy (Longshoremen's Union officials) to testify concerning a dock work stoppage which occurred in Hoboken, New Jersey in May, 1960, for the alleged purpose of getting rid of a crime-fighting chief security officer on the docks. The petitioners have been held in contempt, twice, for refusing to testify under these subpoenas. The second of those contempt cases gives rise to the instant petition for certiorari. The prior contempt case involved issues of N.L.R.B. preemption and adequate apprisal of the purpose or relevancy of the interrogation. After purging themselves of the prior contempt by invoking the privilege against self-incrimination, the petitioners were conferred immunity under ostensible statutory authority of the State of New Jersey (paralleling New York legislation for this bi-State agency). The immunity was expressly stated by the Waterfront Commission as not being intended to cover federal incrimination. Petitioners, still refusing to answer, were convicted in the Superior Court of New Jersey of both criminal and civil contempt, in a unified proceeding upon both the civil and criminal charges. These convictions were rendered after a "trial" in which the only factual issue tried was whether the petitioners have grounds for fearing federal incrimination. Even as to this latter issue the petitioners were denied, *in toto*, all relief by way of discovery, notwithstanding their detailed motions for discovery aimed at exploring the question of federal-state collaboration to incriminate petitioners as well as the question of whether the Waterfront Commission was really investigating "crime" or was still trying to obtrude itself into a federally pre-empted "N.L.R.B." area. The Supreme Court of New Jersey affirmed the judgments of civil contempt in all re-

spects and it reversed the judgments of criminal contempt on the sole ground of the intermingling of the civil and criminal contempt proceedings. The Supreme Court of New Jersey did not reach the issue of petitioners' grounds for fearing Federal incrimination, because it held that the State-conferred immunity did not need to extend to Federal incrimination. For this same reason, and because it held the N.L.R.B. pre-emption issue not properly before it, the Supreme Court of New Jersey affirmed the denial of all of petitioners' requests for discovery. The Supreme Court of New Jersey also held that that State's general evidence statute defining self-incrimination to include Federal incrimination did not apply to Waterfront Commission investigations. The questions presented are:

1. Were the purported grants of immunity valid in view of the express exclusion of any grant of immunity against federal incrimination, where the situation in its nature so strongly bespoke the probality if not the virtual certainty of federal-state collaboration to fight alleged waterfront crime, and where petitioners' diligent and exhaustive requests for discovery and for trial testimony to elucidate such federal-state collaboration were denied? Do not these circumstances invalidate the purported grants of immunity simply on the basis of this Court's reservation, in *Knapp* v. *Schweizer*, 357 U. S. 371, as to proper cases which might arise in the future where the matter of federal-state collaboration in crime-enforcement should be present?

2. In any event, does not this case present a proper and indeed a compelling occasion for modification or abrogation of the primary ruling in *Knapp* v. *Schweitzer, supra*—approving a state grant of immunity even though federal

incrimination might result—via a decision which would overrule *Feldman* v. *United States*, 322 U. S. 487 (permitting use in a federal prosecution of evidence coerced through a state grant of immunity), which has been frequently criticized by several of the present Justices of this Court?

3. Were petitioners convicted of "civil contempt" in contravention of their 14th Amendment rights of due process and fair trial, in view of the following posture of the record:—The only factual matters "tried" were (1) the issue of petitioners' grounds for fearing Federal incrimination (which, however, the appellate court below treated as immaterial in view of its holding that the State-conferred immunity need not extend to Federal incrimination), and (2) the facts as to the actual happenings shown on the record of the interrogation before the Waterfront Commission (which were not disputed, i.e., that the petitioners were asked certain questions, refused to answer them, invoked the privilege against self-incrimination, were given immunity, still refused to answer, etc.). There was no trial, however, of the petitioners' claims that, in effect, they had no contemptuous intent and that their resistance to the Waterfront Commission's interrogation was grounded in good faith upon valid legal considerations. Those legal considerations included the following: (a) That petitioners were facing an accusatory and potentially punitive interrogation, entitling them to disclosure of the "case" against them and opportunity to defend; (b) That the failure and refusal of the Commission to afford to the petitioners the requested opportunity to make a rational judgment of the necessity and advisability of invoking the privilege of self-incrimination, which opportunity would have en-

tailed apprisal to the petitioners of the Commission's damaging information against them (if any) and confrontation and cross-examination of accusatory witnesses, worked a denial of due process of law in forcing the petitioners to exercise in the dark the onerous choice involved; and (c) that this failure and refusal of the Commission, and the concomitant denial of all the petitioners' requests for discovery, deprived petitioners of their fair constitutional opportunity to make a rational judgment as to whether the Commission's interrogation represented a bona fide inquiry into waterfront "crime" or whether, on the contrary, the Commission was merely still trying to intrude itself (as petitioners had claimed from the outset) into a federally pre-empted "N.L.R.B." area involving a "labor dispute".

4. Where "civil contempt" is for all practical purposes punitive and indeed indissoluble from "criminal contempt" charges in a single intermingled proceeding, are not the due process considerations in our question #3, above, fortified?

5. On the instant record, and in view of our questions #3 and #4, above, should not the Court consider in a full hearing on certiorari whether a new constitutional requirement of jury trial in "civil contempt" should be enunciated as a part of Fourteenth Amendment due process? (Not argued in this petition but preserved in event of granting of certiorari.)

6. Is it a violation of Fourteenth Amendment equal protection to deny to persons interrogated by the Waterfront Commission the benefit of the general New Jersey evidence statute which defines self-incrimination to include federal incrimination? (Not argued in this petition but preserved in event of granting of certiorari).

Statutes and Rules of Court Involved

The relevant statutory provisions and Rules of Court are printed in Appendix F, *infra*. The case involves portions of the New Jersey legislation relating to the Waterfront Commission of New York Harbor, a bi-state body established under an interstate compact (N. J. Stats. L. 1953, c. 202, pp. 1511 *et seq.*, as amended—see codification in N.J.S.A. 32:23-1 *et seq.*).* Specifically involved is the validity, as here construed and applied, of the New Jersey provisions conferring on the Commission powers to grant immunity to witnesses (N.J.S.A. 32:23-70). See also the New Jersey provisions conferring on the Commission subpoena powers and other investigative powers (N.J.S.A. 32:23-10, pars. 8, 11; N.J.S.A. 32:23-85(4)), and providing for punishment of witnesses, when duly subpoenaed to attend, for failure to produce other evidence before the Commission (N.J.S.A. 32:23-62). The immunity provision above referred to was not part of the original inter-state compact approved by Congress, but was enacted in 1956 in New Jersey (L. 1956, c. 194) and in 1957 in New York (New York Laws 1957, c. 188), as an agreement between the two States ostensibly supplementary to the Waterfront Commission compact and ostensibly amendatory thereof. This immunity legislation was ostensibly enacted pursuant to the provisions of Article XVI, section 1, of the Compact empowering the Legislature of either State, when concurred in by the Legislature of the other, to enact amendments and supplements to the Compact. N.J.S.A. 32:23-70.

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* The New York counterpart legislation is N. Y. Laws 1953, cc. 882, 883, as amended—see McKinney's Unconsolidated Laws, §§ 6700aa et seq. The consent of Congress to the compact was given by the Act of August 13, 1953, c. 407, 67 Stat. 541.

Other provisions of the Waterfront Commission legislation of New Jersey, and the New Jersey Rule of Court under which the Waterfront Commission instituted the within contempt proceedings (R.R. 4:46-5)(c)), are quoted in Appendix F, *infra*. The case also involves, subordinately, the so-called New Jersey Evidence Act of 1960, which, although it expressly states that "a matter will incriminate * * * if it constitutes an element of a crime against * * * the United States, or * * * is a circumstance which with other circumstances would be a basis for a reasonable inference of a commission of such a crime, or * * * is a clue to the discovery of a matter which is within [such categories of crime]", was construed in this case by the Court below not to be applicable to immunity proceedings conducted by the Waterfront Commission of New York Harbor. See N.J.S.A. 2A:84a-18, 19, 32 (printed in Appendix F, *infra*). The case also involves several federal statutes, cited and discussed *infra*, which petitioners claim give rise to reasonable fear of federal incrimination in the Commission's interrogation of petitioners.

Statement of the Case and of How the Federal Questions Are Presented

The controversy between the Waterfront Commission and these petitioners originated in the 1960 happenings previously referred to, which led to prior contempt citations against petitioners; and, as noted, petitioners have been purged of those prior contempts. The prior contempt proceedings arose as a result of refusals by petitioners in May, 1960, to answer certain questions in a hearing or investigative proceeding before the Commission. The in-

stant contempt case arises from a similar situation in October, 1961, with one important difference, namely, that the petitioners' latest refusals to answer occurred after petitioners had invoked their privilege against self-incrimination and the Commission had purportedly conferred immunity upon them. The prior (1960) contempt proceedings—which involved primarily the issue of N.L.R.B. pre-emption—led to an appeal by the present petitioners to this Court, which was dismissed (368 U. S. 32—No. 362). We shall have occasion to refer, hereinafter, to our Jurisdictional Statement in said appeal to this Court, and we respectfully request the Court to refer to the copies of that Jurisdictional Statement which we assume still repose in the Court's files.

The prior contempt proceedings (1960) had also involved an issue of apprisal to the instant petitioners as to the purpose of the Waterfront Commission's interrogation. Petitioners had insisted, unavailingly, throughout those prior contempt proceedings (See our prior Jurisdictional Statement mentioned *supra*), that the record did not show an adequate due process apprisal to them of the Commission's contention that it was interested in investigating Waterfront "crime" as distinct from investigating a "labor dispute" within the pre-emptive jurisdiction of the N.L.R.B. We readily acknowledge that when the petitioners appeared before the Commission again for renewed interrogation, after the conclusion of the prior contempt proceedings (in which, again, petitioners were purged of said prior contempt), petitioners stood apprised of the general purpose of the Commission's interrogation. That is, although petitioners had not had such apprisal during

the 1960 interrogation itself, they did learn from the subsequent court proceedings in the contempt case stemming therefrom that the Commission conceived the 1960 work stoppage as possibly being an impairment of the port-watchman system (in the person of a man named Markley), which is to say that the Commission conceived itself to be engaged in an investigation of possible waterfront crime or of efforts to combat the Commission's program of fighting such waterfront crime.

Nevertheless, the apprisal issue became acute in a new form when the Commission renewed its efforts (October 3, 1961) because it was now explicit on the record that the Commission aimed at inplicating the petitioners in some kind of criminal activity, i.e., the petitioners were now facing an out-and-out accusatory procedure, in which, furthermore, it was realized by everyone that the Commission's statutory power to confer immunity was probably going to be invoked to strip the petitioners of the protection of the privilege against self-incrimination. The very reason of the Commission's existence, namely the fighting of waterfront crime, formed the motive of this renewed interrogation, according to the Commission's own insistent assertions (D3a to D7a).* The, at least ostensibly accusatory nature of the interrogation, therefore, could no longer be doubted. The Commission's statutory powers, moreover, include a fearsome array of punitive weapons (N.J.S.A. 32:23-1 *et seq.*). Thus, the petitioners were facing not merely an *accusatory* proceeding, but also a potentially ***punitive*** one at the hands of the Commission itself. The petitioners were

* These references are to our printed appendix in the court below (extra copies filed herewith).

not merely being "investigated", then, but were also being "tried", in view of the peculiar combination of powers that are vested in this Commission. These circumstances alone, without more, would have caused the petitioners to insist upon adequate apprisal of any damaging information that the Commission possessed concerning them, and the right to be confronted with the accusatory witnesses and to cross-examine those witnesses.

However, there was still a further reason why the petitioners felt so entitled. In view of the over-hanging threat of the Commission's immunity powers, and in view also of the fact that it is always a serious disadvantage to a person to be put in the position where he may have to exercise his privilege against self-incrimination, the petitioners considered that they were entitled to full apprisal of the Commission's "case" against them before they should have to make the painful choice of invoking the privilege. For all of the above reasons, the petitioners, at the proceedings before the Commission on October 3, 1961, and in the subsequent proceedings before the Commission (see below), asserted in a systematic manner at every appropriate stage their requests for apprisal along the lines above mentioned.

The pertinent parts of the transcripts of the Commission's proceedings of October 3, 1961 were before the courts below as Exhibits in support of the Commission's motions for contempt (Exh. E—Murphy; Exh. F—Moody; D17a; D35a).

These transcripts are in all essential respects a virtual re-play of the Commission's style of interrogation of the petitioners in the May, 1960 proceedings. That is, once

again in these October 3, 1961 proceedings the Commission flatly declined to disclose any damaging information which it might possess concerning petitioners, and it merely informed them that it was interested in finding out the purpose of the alleged opposition to port watchman Markley. Every effort by the petitioners to ascertain the purpose and pertinency of the interrogation to any degree beyond the utterly general "apprisal" just described, was rejected, including requests by the petitioners for production of any order by the Commission directing the investigation to be held, and including also requests that the Commissioners themselves (or any other persons having knowledge of the matter) appear as witnesses in the Commission's proceedings (D18a to D37a; D39a to D52a).

Furthermore, and of utmost importance, the petitioners unavailingly urged at the October 3, 1961 proceedings our above-described position that the Commission was prejudicing the petitioners' rights of due process in putting them to the onerous choice of invoking the privilege against self-incrimination before giving them sufficient apprisal of the accusatory facts to enable them to make such choice on a rational basis.*

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* The following is one of the several statements of the petitioners' position before the Commission on October 3, 1961 (D41a):

"Mr. Krieger: * * * I object * * * in that * * * there is a failure to state the purpose of this investigation, the pertinency of this question and further, * * * now I ask you for the purpose and pertinency of the statement, detail the specific charges that may concern this individual, also the names of any witnesses to support such charges and a confrontation with such witnesses. I make these requests on the grounds of due process of law and the right of a fair hearing and examination. I am pointing out that the Commission is an accusatory agency expressly claiming that its function is to deal with commissions

The Commission's representatives at the October 3, 1961 proceedings overruled all of the petitioners' objections except the privilege against self-incrimination. Except for answering questions about their identity and the title of their offices in the Union, both petitioners refused to answer all questions, invoking the privilege against self-incrimination (which they did under the protest above noted based on denial of due process of law) (D18a to D52a). The Commission's representatives thereupon announced that the proceedings would be adjourned pending a determination by the Commission as to whether to invoke the immunity provisions of the Compact (D36a; D52a). In the interim petitioners were purged of the prior contempt because they had invoked the privilege against self-incrimination (D55a).

On October 27, 1961, the petitioners were again required to appear before the Commission's representatives, for the purpose of having conferred upon them the dubious boon

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of crime by individuals. This makes the Commission a combination of a Grand Jury and a punitive tribunal. And if the purpose and pertinency and all the other full apprisals above described have not been made, then Moody is forced under these circumstances to make a choice on whether or not to invoke privileges guaranteed by the Constitution, and * * * in a setting that denies him due process of law. That being so, there are serious disadvantages that he is placed in both legal and social, which attach to a person who is compelled to invoke the privilege of self incrimination. It constitutes a denial of due process of law to force this man to choose to invoke, at such a disadvantage the privilege of self incrimination. The Waterfront Commission, by refusing to give us full apprisal from which we would be able to determine rationally whether we need to invoke self incrimination, is forcing us to invoke the privilege in the dark, and is forcing us to incur the disadvantages above-mentioned in the dark, * * * without due process of law. And, therefore, under the circumstances this witness must invoke the privilege of self incrimination under protest. * * *"

of "immunity". The transcripts of the Commission's proceedings of October 27, 1961 were before the Courts below in the instant contempt proceedings as Exhibits annexed to the Commission's motions for contempt (Exh. I—Murphy; Exh. J—Moody; D57a; D92a).

In the October 27, 1961 proceedings, once again, the purpose of the proceedings was stated by the Commission's representatives in the now familiar terms of mere generality ("to inquire into violations of the Compact in connection with a work stoppage in May 1960", etc.). The petitioners reiterated their prior demands for a fuller statement of the purpose and pertinency of the interrogation, including requests for any relevant order of the Commission that might show a determination by the Commission as to purpose or pertinency. The petitioners also pointed out that there has never yet been in this case any explicit judicial determination as to the issues of adequate apprisal. All such objections and requests by the petitioners were rejected. The only statement vouchsafed by the Commission's representatives in support of their announced intention to invoke their alleged immunity powers was a bare recital of the procedural history of this case (D57a to D111a).

Before the petitioners took the stand at the Commission's proceedings on October 27, 1961, the objections of due process which they developed in the proceedings of October 3, 1961—see, *e.g.*, our last preceding footnote, *supra*—were restated for the record (D61a; D94a). These objections were likewise re-stated at appropriate times during the course of the questioning of the petitioners on October 27, 1961 (D57a *et seq.*).

Most especially, the petitioners on October 27, 1961 objected to the purported grant of immunity on the ground that the immunity did not extend to federal incrimination; the Commission's representatives stated that the grant of immunity did not so extend to federal incrimination (D74a to D76a; D93a to D94a).

The questioning of the witnesses (the petitioners) on October 27, 1961 followed the pattern of the witnesses' invoking the privilege against self-incrimination under all the objections, reservations and protests earlier described in connection with the proceedings of October 3, 1961; the Commission's representatives either directing each witness to answer the questions notwithstanding his claim of privilege, or directing him so to answer on the express ground that he was being granted immunity (D71a to D91a; D93a to D103a).

The petitioners also invoked, in the proceedings of October 27, 1961, all of the grounds asserted in their Jurisdictional Statement filed with this Court in their attempt to obtain review of the prior contempt judgments (D100a). This brought back into the case, we submit, the issue of N.L.R.B. preemption (as fully argued in our aforesaid Jurisdictional Statement).

At the conclusion of the proceedings of October 27, 1961, the Commission's representatives directed their attorney to proceed against the petitioners for contempt (D91a; D103a).

The Commission's motions to punish petitioners for contempt (D3a *et seq.*) (after the above-described supposed grants of "immunity"), recited once again the Com-

mission's official purposes as an organization created "to eliminate evil conditions and criminal and corrupt practices in the port of New York District" (D3a; see also D3a to D7a), recounted in detail the history of the prior contempt proceedings (D6a to D9a), set forth the statutory provisions relating to the Commission's power to grant immunity (D10a to D11a), recited the interrogational proceedings of October 3, and 27, 1961 (D9a to D13a), and requested that petitioners be punished as for both a civil and a criminal contempt of court (D14a to D15a)—the 1960 contempt having been solely *civil* (D27a). Annexed to the motions were the various exhibits, to which reference has been made, depicting the prior history of this matter (D16a to D111a).

The petitioners filed an answer to the Commission's motions denying all the allegations, and raising separate defenses, *inter alia*, of failure to grant immunity against federal incrimination, denial of due process of law, preemption of the subject matter of the inquiry by the Federal Management Labor Relations Act, and inadequate apprisal of purpose and pertinency (D112a to D114a). Petitioners also moved for a bill of particulars (D115a), and for an order requiring answers to interrogatories.* Petitioners also requested a jury trial (D120a).

In describing the next step in this matter—the "trial" of the instant contempt proceedings following the conferral of "immunity"—we come to a striking feature of the case. Notwithstanding that the motions for contempt expressly

* The interrogatories sought information identical with that sought by the bill of particulars and are not printed in Appellants' Appendix in the court below.

sought conviction both for criminal and civil contempt, and notwithstanding that the proceedings were not in the remotest way based upon conduct of the petitioners that could conceivably bring into play any "summary" power to punish for contempt, the trial court announced at the "trial" of the contempt motions that no witnesses would be heard and no testimony would be taken—which meant that the petitioners would be "tried" on what amounted to criminal charges based solely on the Commission's moving papers, the petitioners not even having the benefit of affidavits on their own behalf because they had entered a general denial *per* their formal answer to the contempt motions in the unquestioning assumption that they were going to have a "trial" at which testimony would be introduced. See, *e.g.*, D157a to D158a, D182a.

Testimony by the petitioners on the issue of their cause to fear federal incrimination (D184a to D209a) was the only evidence taken at the "trial" below, notwithstanding repeated requests by the defense (*e.g.*, D179a; D182a). See also D236a.

All of the petitioners' defenses of law and fact raised by their answer to the contempt motions were rejected by the trial court. Petitioners' motions for discovery were denied. Their request for jury trial was denied. D213a to D236a; D250a to D257a.

The trial court ruled that the Commission's grant of immunity was valid. Both petitioners were adjudged guilty of both civil and criminal contempt and were sentenced to fine and imprisonment (D250a to D257a).

In the appeal from the contempt convictions in the court below—the Supreme Court of New Jersey, which had di-

rectly certified the appeal from the Appellate Division of the Superior Court—the judgments of conviction of criminal contempt were reversed and remanded on the ground of the intermingling of the civil and criminal proceedings, but the judgments of civil contempt were affirmed. The Court below ruled, in effect, that by virtue of decisions of this Court, notably *Knapp* v. *Schweitzer, supra,* there is no constitutional requirement that State-conferred immunity shall protect against Federal incrimination; and it held that the New Jersey Evidence Act of 1960 (*supra*), which defines the New Jersey privilege against self-incrimination as embracing matters of federal incrimination, is not applicable to the bi-state legislation relating to the Waterfront Commission. The Court below also held that the petitioners' contentions addressed to the issue of N.L.R.B. pre-emption were not properly presented for decision because, the Court said, those matters had been litigated and disposed of in the prior contempt proceedings. The Court below also held that petitioners' contention that they should not have been required to make the onerous choice as to invoking their privilege against self-incrimination in the dark, as it were, was without substance. As we understand the decision of the Court below, it was seemingly on the basis of the rulings just described that the Court also ruled that all of petitioners' requests for discovery, including those addressed to the issue of Federal-State collaboration to incriminate petitioners and to the issue of the bona fides of the Waterfront Commission's assertions that its investigation was aimed at waterfront crime rather than a "labor dispute", had been properly denied by the trial court. Also, since the Court below took the view that a State conferral of immunity is not constitutionally required to extend to Federal

incrimination, that Court declared that it deemed it unnecessary to determine whether the petitioners herein had grounds to fear federal incrimination. The Court below deemed the Waterfront Commission's needs to pursue criminals (including apparently even "federal" criminals) so paramount that it said (Appendix A, *infra*, pp. 23a-24a):

> "If, as defendants contend, a witness may claim the privilege against self-incrimination with respect to federal crimes notwithstanding a conferral of bi-state immunity by the Commission, it would follow that there could be no effective investigation not only of the state aspects of such crimes but even of the non-criminal aspects of waterfront conditions *since possible federal criminal overtones are frequently present.* This is so because of the nature of waterfront activity *and its constant involvement with interstate commerce and other such areas of federal jurisdiction.* Since the Commission cannot grant immunity as to the federal crimes it will remain helpless. The difficulty is not merely fanciful; it might well result that investigations by the Commission would be seriously hampered and, in many cases, frustrated." (Emphasis supplied)

Reasons for Granting the Writ

1. The question of the relationship between state-conferred immunity and federal incrimination—a question which is usually said to have been set at rest against any theory of state immunization of federal incrimination—does not seem permanently foreclosed in the light of the most recent decisions of this Court. It is true that in *Knapp* v. *Schweitzer*, 357 U. S. 371 (1958), a state grant of immunity was approved even though federal incrimination might

result—although, the Court did reserve the case of an actual federal-state cooperative effort at incrimination. Four of the Justices in the *Knapp* case pointed out that the rule of that case would cease to have even ostensible doctrinal validity if the case of *Feldman* v. *United States*, 322 U. S. 487 (1943) (permitting use in a federal prosecution of evidence coerced through a state grant of immunity) were to be overruled. The same four Justices (Chief Justice WARREN, and Justices BRENNAN, DOUGLAS and BLACK) noted the problem of the *Feldman* case again in *Mills* v. *Louisiana*, 360 U. S. 230 (see especially, Justice DOUGLAS' dissent in the *Mills* case for a summary of the dilemma created by the *Feldman* case, whereby, Justice DOUGLAS argued, it had now become imperative to require state-conferred immunity to bar federal incrimination).

Again, in *Hutcheson* v. *United States*, 369 U. S. 599, the three Justices (Chief Justice WARREN and Justices BRENNAN and DOUGLAS) who did not join in the three-Justice opinion of the Court, urged the question of reconsideration of the *Feldman* decision, *supra*.

All of this takes on an even more urgent interest in view of *Mapp* v. *Ohio*, 367 U. S. 643, where the Court decided for the first time that the Fourth and Fourteenth Amendments of the United States Constitution require the exclusion from State criminal prosecutions of evidence obtained by unreasonable search-and-seizure, overruling *Wolf* v. *Colorado*, 338 U. S. 25. At its preceding Term, the Court had outlawed the "Silver platter" doctrine under which articles obtained as a result of unreasonable search-and-seizure by state officers, without involvement of federal officers, had long been permitted to be introduced in evi-

dence against defendants in federal criminal trials. *Elkins* v. *United States*, 364 U. S. 206. The bearing of these search-and-seizure developments on the issue of state-federal immunity is that the *Feldman* case, *supra* (permitting use in a federal criminal trial of evidence coerced by a state grant of immunity), had relied strongly if not dispositively on the analogy of the then-still-intact "Silver platter" doctrine, which was thrown out in *Elkins*, *supra*, and which was reciprocally fortified in its demise, as it were, by *Mapp* v. *Ohio*, *supra*. It, therefore, appears that the situation may well be ripe for an abandonment of the rule of the *Feldman* case, which in turn, would seem to foredoom the rule of cases like *Knapp* v. *Schweitzer*, *supra*. In this highly mobile condition of the operative judicial doctrines pertaining to our subject, it is timely for this Court, we respectfully submit, to declare, for the purposes of the present case, that the failure of the Commission to immunize the petitioners against federal incrimination invalidates the purported grants of immunity as a matter of federal constitutional law.

2. In any event, there is the reservation which this Court expressly made in *Knapp* v. *Schweitzer* for future situations of "collaboration between state and federal officers", wherein "the defendant could successfully assert his privilege in the state proceedings" (357 U. S. at 380); we respectfully urge that the record in the present case brings into play that reservation. We take this position because, as noted in our Statement of the Case, *supra*, we expressly (but unavailingly) sought in the proceedings below exhaustive discovery and the introduction of evidence at the contempt trial with the express view of developing this

matter of federal-state collaboration. We urge this position, also, because of the "semi-federal" (if we may so term it) character of the Waterfront Commission of New York Harbor, a bi-state agency created by federally approved Compact and designed (so the Commission never tires of asserting) to combat waterfront crime in interstate and foreign commerce. The Commission must necessarily deal with interstate and foreign commerce. It is common for interstate agencies to have direct relations with federal departments. 29 *Fordham L. Rev.* 421, 431, Leach, *"The Federal Government and Interstate Compacts."* Indeed, the compact in question provides for direct relations in areas where federal funds are sought by the Commission. *N.J.S.A.* 32:23-77.

Although the Court below deemed it unnecessary to reach the question, we consider it proper to point out that, upon the Commission's own assertions in its various papers throughout this litigation, petitioners Murphy and Moody do indeed face exceedingly dire prospects of federal incrimination. Throughout this litigation, the Commission has been trumpeting the suspicion that Murphy and Moody have some guilty knowledge of or involvement in an unlawful concert by union longshoremen aimed at removing from the waterfront scene a reputedly diligent and honest port watchman or port security officer (Markley), the obvious imputation being that Murphy and Moody are in some way guiltily involved in an attempt to make it possible for thieves to steal property on the waterfront.

From this, it at once becomes evident that, if the Commission's imputations are to be credited, coerced testimony by Murphy and Moody on the subject matter in ques-

tion would put them in direct peril of incrimination arising under 18 U.S.C.A. § 659, and statutes adjective thereto. Said § 659 makes it a federal crime to embezzle, steal, etc. from any "railroad car, wagon, motor truck, or other vehicle, or from any station, station house, platform or depot, or from any steamboat, vehicle or *wharf* * * * any goods or chattels moving as or which are a part of or which constitute an interstate or foreign shipment of freight or express". Said § 659 contains additional detailed provisions, too lengthy to be quoted, which would place Murphy and Moody in peril of prosecution on the basis of the Commission's imputations. Our reference above to provisions which we termed "adjective" to § 659 has in view the federal criminal provisions against conspiracy to commit any federal offense (18 U.S.C.A. § 371), against aiding and abetting in the commission of any such offense (18 U.S.C.A. § 2), against acting as an accessory after the fact in regard to any such offense (18 U.S.C.A. § 3), and against misprision of federal felonies (18 U.S.C.A. § 4). Thus, under the theory of the Commission's own imputions in this case, Murphy and Moody would have reasonable cause to fear federal prosecution for conspiracy to assist in making it possible for thefts to be perpetrated at the Hoboken pier here involved, for conspiracy to effect misprision of the thieves, for aiding and abetting in such theft or in such conspiracy, and for acting as accessories after the fact in such thefts or conspiracy—not to say Internal Revenue offenses.

Similar reasonable cause to apprehend federal incrimination arises under the following additional federal statutes: (1) 18 U.S.C.A. §1951 (the so-called anti-racketeering stat-

ute punishing the offense of interference with commerce by threats or violence—"whoever in any way or degree obstructs, delays or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do", etc.); (2) "conspiracy" or "combination" "in restraint of trade or commerce" under 15 U.S.C.A. § 1, *i.e.*, violation of the federal anti-trust law (it is to be noted that 15 U.S.C.A. §17, exempting labor unions from certain aspects of the anti-trust laws, would not be a bar to federal prosecution in the circumstances connoted by the Waterfront Commission's imputations herein); (3) criminal prosecution for violation of the federal civil rights law, 18 U.S.C.A. § 241, in that the alleged attempt by Murphy and Moody to force Markley off the docks would come within the statutory language "if two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the * * * *laws* of the United States", Markley's rights under the Federal Management Labor Relations Act being protectible under said civil rights statute, as shown below; (4) furthermore, on the quite possible theory that the alleged thefts at the waterfront might involve situations arising under the "special maritime and territorial jurisdiction" of the United States, Murphy and Moody face the danger of federal incrimination (under the Commission's imputations) pursuant to 18 U.S.C.A. sections 661 and 662, pertaining to thefts within said special federal jurisdiction (the above mentioned conspiracy, aiding and abetting, misprision, etc. provisions being pertinent hereto also); (5) also, should the alleged waterfront thefts involve any "things of value of the United States, or of

any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof", similar federal incrimination could arise under 18 U.S.C.A. section 641 and the "adjective" statutes above mentioned.

Further as concerns the possibility of a federal civil rights prosecution above mentioned, we respectfully refer the Court to pages 18 to 20 of our printed Jurisdictional Statement which we filed in this Court in the prior stage of this matter; see footnote 9 at said pages 18-20, where we spell out in detail the ways in which Markley's rights under the Labor-Management Relations Act could be operative in this case. Any asserted violation of those federally protected rights of Markley by Murphy and Moody could be federally incriminatory as a denial to Markley of rights given to him by "federal law" within the meaning of 18 U.S.C.A. section 241, the civil rights penal provision above discussed.

See also 88 A.L.R. 2d 463.

Finally, we call attention to the following item in connection with the Commission's interrogation of Murphy and Moody in the "immunity"-conferral proceedings in this case, which serve to underscore the reality and the rationality of the petitioners' fear of Federal incrimination if they should answer the Commission's question: Not content with asking the petitioners about the port-security (i.e., imputedly "criminal") aspects of the *May 1960* longshoremen's walkout, the Commission *on October 27, 1961* demanded that the petitioners answer questions about their *then* knowledge and intentions concerning this port-security feature which was allegedly entailed in the

alleged opposition to the presence of port-watchman Markley; by this questioning, we submit, the Commission manifested to the petitioners that it was imputing to them a *continuing* complicity in alleged violations of federal criminal statutes (D89a, D90a).

3. In connection with our "Questions Presented" herein Nos. 3, 4 and 5, *supra*, we are in effect bringing forward three issues that we realize are novel, namely, the jury-trial issue mentioned in our Question No. 5, *supra*, and: (1) That investigative or other inquisitional bodies should not be permitted, as a matter of due process of law, to put citizens in a position of having to decide in the dark whether or not they should incur the grievous legal and social disadvantage of invoking the privilege against self-incrimination; this point seems to us especially compelling where, as in the case at bar, the setting of the inquisition is not merely investigative but also accusatory and punitive. (2) That in civil contempt no less than in criminal contempt due process requires a trial of the issue of defendant's "intent" or non-contemptuous good faith. So far as we can discover, nowhere in this Court's numerous decisions on the law of contempt is there any suggestion that, as a general proposition, due process functions any differently in a contempt trial depending upon whether it is "civil" or "criminal"; and see Mr. Justice Douglas' dissent (joined by the Chief Justice and Mr. Justice Black) in *Uphaus* v. *Wyman*, 364 U. S. 388, 404. Petitioners herein were denied absolutely any trial of the issue of their good faith in regard to the alleged civil contempt,* and they were refused discovery

* Cf. the Court's emphasis upon similar "good faith" defenses in *Hecht Company* v. *Bowles*, 321 U. S. 321 (1944).

for the purpose of this defense—i.e., discovery aimed at eliciting whether the Commission was genuinely concerned about petitioners' supposed role of fostering crime on the waterfront, or whether the Commission was attacking legitimate labor union interests which petitioners as union officials felt compelled to protect.

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

HAROLD KRIEGER
Attorney for Petitioners

[Appendices Follow]

APPENDIX A

Opinion of Supreme Court of New Jersey on Judgment Here Sought to be Reviewed

SUPREME COURT OF NEW JERSEY
A-53 SEPTEMBER TERM 1962

In the Matter
of
THE APPLICATION OF THE WATERFRONT COMMISSION OF NEW YORK HARBOR, to punish JOHN MOODY, SR., for failure to obey a Subpoena.

In the Matter
of
THE APPLICATION OF THE WATERFRONT COMMISSION OF NEW YORK HARBOR, to punish WILLIAM MURPHY for failure to obey a Subpoena.

Argued Decided

MR. HAROLD KRIEGER argued the cause for the Defendants-Appellants, John Moody, Sr. and William Murphy. (MESSRS. KRIEGER & CHODASH, Attorneys; MR. ROBERT WALL, of counsel, and MR. HAROLD KRIEGER on the brief.)

MR. ROBERT A. PIN and MR. IRVING MALCHMAN argued the cause for the Waterfront Commission of New York Harbor. (MR. WILLIAM P. SIRIGNANO and MR. IRVING MALCHMAN (both of the New York Bar) on the brief.)

Appendix A—Opinion of Supreme Court of New Jersey

The opinion of the court was delivered by PROCTOR, J.

This is a consolidated appeal from two judgments of the Superior Court, Law Division, adjudging each of the defendants, John Moody, Sr., and William Murphy, guilty of civil and criminal contempt for failing to testifying pursuant to subpoenas issued by the Waterfront Commission of New York Harbor (Commission). The judgments fined the defendants $50.00 each and sentenced them to 30 days in jail. The judgments further ordered that the subpoenas be obeyed by the giving of responsive answers before the Commission to the questions set forth therein, and that the defendants be incarcerated until they answer those questions. The judgments also provided for a stay of execution pending appeal, the defendants having previously posted bonds.

We certified the defendants' appeal before argument in the Appellate Division.

This is the second time that the defendants have been adjudged in civil contempt for their refusal to testify pursuant to the aforementioned subpoenas. Briefly, the history of this litigation is as follows: One James H. Markley was an investigator for the Commission, assigned principally to cover the piers of the American Export Lines in Hoboken, New Jersey. On or before May 16, 1960, Markley left the employ of the Commission in order to work for the American Export Lines as a security officer, and obtained a license from the Commission to operate as a port watchman. On Monday, May 16, 1960, the day Markley commenced work for the American Export Lines on its Ho-

boken piers, the longshoremen employed by American Export Lines on those piers did not report for work. This work stoppage, except for the morning of Tuesday, May 17, continued through Friday, May 20, 1960. The striking employees were members of Hoboken Local No. 2 of the International Longshoremen's Association (ILA). The defendant Moody is an organizer of the ILA in New Jersey, and the defendant Murphy is the business agent of Local No. 2.

Under our Waterfront Commission Act, N.J.S.A. 32:23-1 *et seq.*, (the New York counterpart is New York Laws 1953, c. 882, c. 883), the longshoremen who participated in this work stoppage are required to be and are registered with the Commission. N.J.S.A. 32:23-27. Also, under the Act, Markley, as a security officer of American Export Lines, is required to be licensed as a port watchman. N.J.S.A. 32:23-39.

The Commission had information that the work stoppage was "a concerted effort to keep James H. Markley off the piers of the American Export Lines." Accordingly, the Commission instituted an investigation to determine whether any persons registered with or licensed by the Commission were violating the Waterfront Commission Act by coercing an employer to limit the functions of, or to discharge, a licensed port watchman. In connection with its investigation, the Commission duly served the defendants with subpoenas on May 18, 1960, ordering them to appear and testify at the Commission's offices in New York City. The defendants appeared at the offices of the Commission in response to the subpoenas on May 19, 1960. At

the hearing, Moody, after giving his name and address and testifying that he was a union official, refused to answer any further questions. Murphy testified that he was a business agent of Local No. 2 and represented members of the local working at the Hoboken piers of the American Export Lines. He said he knew that the longshoremen did not work on May 16, 1960, and that it was common knowledge that for some time before that day things were not normal at the American Export Lines. However, he refused to say whether those conditions were related to the employment of Markley as a port watchman, and he refused to answer any other questions. Both defendants expressly declined to assert their privilege against self-incrimination, although they were specifically asked if that was one of the grounds for their refusal to testify. The primary reason for their refusal to testify was their assertion that the Commission had no statutory authority to investigate the work stoppage because it involved a labor dispute over which the National Labor Relations Board had exclusive jurisdiction.[1]

Thereafter, the Commission instituted contempt proceedings against the defendants in the Superior Court, Law Division, which resulted in judgments dated June 20, 1960, holding the defendants guilty of civil contempt and ordering that they be fined $50.00 each and that they be incarcerated until they obeyed the Commission's subpoenas. These judgments were affirmed by this court, and the United

1. On defendants' appeal from the first judgment holding them in contempt (*In re Application of Waterfront Comm. of N. Y. Harbor*, 35 N. J. 62 (1961)), defendants' other stated reasons for their refusal to answer were not urged as a ground for reversal.

States Supreme Court dismissed the defendants' further appeal and also denied *certiorari*. *In re Application of Waterfront Comm. of N. Y. Harbor*, 35 N. J. 62 (1961), *appeal dism'd and cert. den. sub nom. Murphy* v. *Waterfront Commission of New York Harbor*, 368 U. S. 32, 7 L. ed. 2d 91 (1961).

Pursuant to the mandate of this court in the above contempt proceedings, the defendants appeared before the Superior Court, Law Division, on October 3, 1961. The court directed the defendants to appear before the Commission pursuant to the May 1960 subpoenas. Later that day, the defendants appeared at the offices of the Commission as directed. However, except to give their names, addresses and occupations, the defendants again refused to answer any questions, this time upon a number of new objections including the privilege against self-incrimination. All of the objections were overruled by the Commission except the assertion of the privilege against self-incrimination. The hearing was then adjourned and the subpoenas were continued until October 10, 1961, so that the Commission could decide whether to grant the defendants immunity from prosecution pursuant to N.J.S. 32:23-86(5) of the Waterfront Commission Act, and if so, to afford the Commission an opportunity to give notice to the appropriate officials as required by that subdivision.

On the following day (October 4, 1961) the defendants and the Commission's representative appeared before the Law Division. The court found that the defendants had obeyed the subpoenas, and that their assertion of the privilege against self-incrimination had been recognized by the Commission as a valid basis for their refusal to

answer the Commission's questions. The court held that, since the defendants had complied with the judgments of the court entered June 20, 1960, they had purged themselves of contempt. However, the court also directed that the defendants should continue to be subject to the subpoenas, and that the defendants appear before the Commission on the adjourned return date (October 10, 1961).

The return date of the subpoenas was further adjourned with the consent of the parties until October 27, 1961, at which time the defendants appeared at the offices of the Commission. At the outset of this meeting, Myles J. Ambrose, Executive Director of the Commission, announced, "The purpose of the meeting is to inquire into violations of the Compact in connection with a work stoppage in May, 1960, at the American Export Line piers in Hoboken, New Jersey."

The following documents were made part of the record: (1) letters (pursuant to N.J.S.A. 32:23-9) from the Commissioners designating Ambrose and William P. Sirignano, the Commission's General Counsel, to act in the places of Commissioners Harold R. Tyler, Jr., and David C. Thompson in the investigation wherein Murphy and Moody were subpoenaed, and to confer immunity upon them pursuant to N.J.S.A. 32:23-86(5); (2) copies of letters sent pursuant to N.J.S.A. 32:23-86(5) to the Attorneys-General of New York and New Jersey, to the District Attorney of New York County and to the Prosecutor of Hudson County, together with certificates of mailing, notifying them of the Commission's intention to confer immunity upon Murphy and Moody; and (3) letters of reply received from all of the above-named officials except the Prosecutor of Hudson

County, stating that each had no objection to the Commission's proposed grant of immunity to the defendants. No reply was received from the Prosecutor of Hudson County.

Counsel for the defendants objected to the legality of the proceedings on the ground that the Commissioners could not delegate the power to grant immunity to their designees, Ambrose and Sirignano. They also challenged the adequacy of the letters of notice sent to the officials of the two States. They further demanded a statement apprising them of the purpose and pertinency of the interrogation, contending that the Commission's failure to give them such a statement deprived them of due process of law. All these objections and demands were rejected.

Thereafter, the defendants each took the stand and, after stating his name and address, each refused to answer any further questions on the ground that his answers might tend to incriminate him. Thereupon the Commissioners' designees granted immunity to each of the defendants pursuant to N.J.S.A. 32:23-86(5) against prosecution in the States of New York and New Jersey concerning any transaction to which they would testify, and directed the defendants to answer each of the questions. All of the questions pertained to the defendants' knowledge or actions in connection with the May 1960 work stoppage. The defendants again refused to answer for all of the reasons stated above, and particularly because the grant of immunity did not protect them against federal prosecution.

The Commissioners' designees expressly recognized that the grant of immunity did not extend to federal prosecution, but nevertheless directed the defendants to answer,

saying that there was no requirement that the immunity extend that far. Upon the defendants' further refusal to answer, the Commissioners' designees directed the attorney for the Commission to institute contempt proceedings against the defendants.

The Commission initiated the present proceedings by moving before the Law Division that the defendants "be punished as for a civil and criminal contempt of court." Annexed to the moving papers were numerous exhibits depicting the prior history of the matter and including transcripts of the proceedings before the Commission on October 3, 1961, and October 27, 1961. In response to the Commission's motions, the court issued orders on November 1, 1961, directing the defendants to show cause why they should not be punished as for a contempt of court. The defendants filed an answer to the Commission's motions in which they denied all the allegations, and raised the following separate defenses: (1) failure of the Commission to grant immunity against federal incrimination; (2) improper delegation by the Commission of the power to confer immunity; (3) insufficient notice to the officials of the respective States; (4) failure to explicitly confer immunity as to each question asked; (5) preemption of the subject matter of the investigation by the Federal Labor Management Relations Act; and (6) inadequate apprisal of purpose and pertinency, resulting in a denial of due process of law. The defendants also moved for a bill of particulars or, in the alternative, an order requiring answers to interrogatories. These discovery motions sought to compel the Commission, in effect, to produce for the

defendants' inspection its entire investigative files relating to the work stoppage investigation, including intra-office communications as well as communications between the Commission and any state or federal officials. Defendants also demanded a jury trial and, lastly, moved to quash the subpoenas as having been exhausted when the defendants were purged of their prior contempt.

The matter was heard before the Law Division on November 21 and 22, 1961. The court heard extensive argument from both sides on the above motions and defenses. However, the trial judge announced that he was "not going to receive any testimony," and said he was "going to decide it [the case] on the record as I've got it." Later the court reconsidered its ruling and concluded that it would receive the testimony of the defendants for the limited purpose of pinpointing their fear of possible federal incrimination. Murphy's testimony concerning the basis for his fear of federal incrimination was as follows:

> "Q. What crimes could you possibly have been connected with as to result in a Federal charge against you or others, in combination with others, in conspiracy with others? A. That the American Export Lines is subsidized by the United States Government and could be sued, the union could be sued, and I could be sued, personally. Interstate commerce freight that was held up during the strike would bring in the Federal Bureau of Investigation, and the rights of watchmen working on the piers that could be in cahoots in pilferages, and stuff like that.
>
> Q. Also, were you aware of the fact it was the contention of the Waterfront Commission that you

tried, and others together, in combination and conspiracy, to keep an individual from employment on the piers, namely, Mr. Markley? A. That's right.

Q. And was that a reason for your exercising that privilege, yourself? A. That's right."

Moody's testimony concerning the basis for his fear of federal incrimination was as follows:

"Q. And you exercised your privilege as you have just testified out of fear of incrimination of any Federal laws? A. That's right.

Q. Will you tell the Court what you feared and pinpoint them and the respect? A. First, from the Waterfront Commission, they have, what they say, the right and authority to question. Now, there's, we say, pilferage, that they say, work stoppage, we had to do with the pilferage and we had to do with the work stoppage and the watchmen being not; in the ILA outside the ILA, that we tried to tell the watchmen what to do and what not to do, and to stop this one gentleman from getting hired on the pier. We don't do that, your Honor.

* * * * *

Q. You have just testified that the American Export Lines are engaged in interstate commerce, is that correct? A. That's right.

Q. And that this stoppage, as contended by the Waterfront Commission was an illegal stoppage, was an interference with interstate commerce? A. That's right.

Q. And is that why you fear incrimination? A. That's right.

Q. And that it could lead to other evidence and tend to lead to other evidence that could possibly incriminate you? A. That's right."

The Law Division held that the Commissioners' designees had power to confer immunity on the defendants; that the Commission's letters to the officials of New York and New Jersey constituted adequate notice under the statute of its intention to confer immunity upon the defendants; that the defendants were adequately apprised of the subject matter of the investigation; and that the Commission was not required to grant the defendants immunity from federal prosecution. The court also expressed its doubt of the sincerity of the defendants' fear of federal criminal involvement. The court found the defendants guilty of both civil and criminal contempt. The court then disposed of the various motions of the defendants, *i.e.*, the motion to quash the subpoenas, the motions for discovery and the motion for jury trial, saying:

> "Those motions were motions directed to the discretion of the Court. However, the disposition of the matter on its merits finally disposed of them, but even in the exercise of discretion, none of those motions would be granted by this Court. So all the other motions are respectfully denied."

The court deferred imposition of sentence in order to secure a pre-sentence report from the probation department.

At the time of sentencing, the defendants' counsel urged that the court on October 4, 1961 had purged the defendants of their original contempt, and that thereafter in the proceedings before the Commission the defendants merely asserted their rights upon novel questions of law. The court noted that the defendants had refused to answer the questions in issue upon three different occasions, to wit, May 19, 1960, October 3, and October 27, 1961.

Though the court believed that the defendants had a "perfect right to interpose whatever legal objections were at their command," nonetheless the court was "constrained to believe that there has to be and there now is, at least for the present, an end to these witnesses being asked these questions." The court directed the Commission to prepare an order which would set out verbatim the questions that the defendants had refused to answer and which would order the defendants to stand committed until they responsively answered the questions; and the court further fined the defendants each $50.00 and sentenced them to jail for 30 days. The court also stated that the defendants, upon answering the questions, could apply to the court for an order purging them of contempt.

On this appeal, the defendants first point out that under the *Evidence Act, 1960* (N.J.S.A. 2A:84A-1 *et seq.*), the privilege against self-incrimination expressly extends to federal incrimination. They argue that since the Waterfront Commission declared that its grant of immunity to the defendants did not and could not extend to federal prosecutions, the Commission's orders to answer were in violation of the aforesaid Act.

The Commission argues that the defendants waived the privilege against self-incrimination by expressly declining to assert it at the first hearing before the Commission on May 19, 1960. The Commission further argues that since the defendants contended in the first contempt proceeding that the Commission's investigation constituted an unlawful interference with innocent conduct, *i.e.*, a labor dispute over which the National Labor Relations Board has exclusive jurisdiction, they are estopped from taking

the inconsistent position in the present contempt proceeding that their testimony might implicate them in illegal conduct under federal law.

Though we think the defendants should have raised all their reasons for their refusal to answer, including the privilege against self-incrimination, at the hearing before the Commission on May 19, 1960, or at least in the contempt proceedings in the Superior Court which resulted in the judgments of June 20, 1960 holding them in contempt, we think that in the circumstances of this case the defendants should not be precluded from raising the issue of the privilege against self-incrimination. The Commission recognized the defendants' right to assert the privilege at its hearing of October 3, 1961, and the trial court on October 4, 1961 also recognized their right when it purged them of their original contempt. Moreover, at its hearing on October 27, 1961, the Commission clearly recognized the defendants' right to assert the privilege when it granted them immunity against prosecution. Finally, the contentions of waiver and estoppel were never raised by the Commission in the court below and therefore it may not raise them for the first time in this court.

We return to the defendants' argument regarding the validity of the Commission's grant of immunity. The Waterfront Commission act is an interstate compact, enacted by the States of New York and New Jersey in 1953 with the consent of Congress, 67 Stat. 541, Act of Aug. 12, 1953, c. 407, in order to eliminate evil conditions on the waterfront in the Port of New York Harbor. The Compact creates the Waterfront Commission as an agency of both States, with authority to license or register workers, and for good cause to refuse licenses and registrations, and to

regulate labor and hiring practices on the waterfront. In order to further the elimination of waterfront evils, the Commission is empowered to investigate waterfront practices and other matters bearing on the objectives of the Compact, and to make recommendations to the two States for the improvement of waterfront conditions and for the effectuation of the purposes of the Compact. The members of the Commission and its properly designated officers may administer oaths and issue subpoenas throughout both States to compel the attendance of witnesses, the giving of testimony, and the production of other evidence. N.J.S.A. 32:23-10. "Witness" is defined in the Compact as "any person whose testimony is desired in any investigation, interview or other proceeding conducted by the commission pursuant to the provisions of this act." N.J.S.A. 32:23-85. Failure to obey a subpoena of the Commission is made punishable by the Superior Court in New Jersey and the Supreme Court in New York "in the same manner as said failure is punishable by such court in a case therein pending." N.J.S.A. 32:23-62. See also R.R. 4:46-5(c). For a history of this bi-state legislation see *Hazelton* v. *Murray*, 21 N. J. 115 (1956); *In re Application of Waterfront Com.*, 32 N. J. 323 (1960).

Under N.J.S.A. 32:23-86(5) of the Waterfront Commission Act, the Commission has explicit statutory power to grant immunity from prosecution in order to obtain the testimony of a witness who refuses to testify upon the ground of self-incrimination. The subdivision grants the Commission the power:

> "(5) To confer immunity, in the following manner: In any investigation, interview or other proceeding

conducted under oath by the commission or any duly authorized officer, employee or agent thereof, if a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, and, notwithstanding such refusal, an order is made upon 24 hours' prior written notice to the appropriate Attorney-General of the State of New York or the State of New Jersey, and to the appropriate district attorney or prosecutor having an official interest therein, by the unanimous vote of both members of the commission or their designees appointed pursuant to the provisions of section 3 of article III of this act, that such person answer the question or produce the evidence, such person shall comply with the order. If such person complies with the order, and if, but for this subdivision, he would have been privileged to withhold the answer given or the evidence produced by him, then immunity shall be conferred upon him, as provided for herein.

" 'Immunity' as used in this subdivision means that such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which, in accordance with the order by the unanimous vote of both members of the commission or their designees appointed pursuant to the provisions of section 3 of article III of this act, he gave answer or produced evidence, and that no such answer given or evidence produced shall be received against him upon any criminal proceeding. But he may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury or contempt committed in answering, or failing to answer, or in producing or failing to produce evidence, in accordance with the order, and any

such answer given or evidence produced shall be admissible against him upon any criminal proceeding concerning such perjury or contempt.

"Immunity shall not be conferred upon any person except in accordance with the provisions of this subdivision. If, after compliance with the provisions of this subdivision, a person is ordered to answer a question or produce evidence of any other kind and complies with such order, and it is thereafter determined that the appropriate Attorney-General or district attorney or prosecutor having an official interest therein was not notified, such failure or neglect shall not deprive such person of any immunity otherwise properly conferred upon him."

Section 3 of Article III, referred to in the above-quoted subdivision, reads in pertinent part as follows:

"The commission shall act only by unanimous vote of both members thereof. Any member may, by written instrument filed in the office of the commission, designate any officer or employee of the commission to act in his place as a member whenever he shall be unable to attend a meeting of the commission." N.J.S.A. 32:23-9.

The immunity subdivision quoted above was enacted in 1956 in New Jersey (L. 1956, c. 194) and in 1957 in New York (*New York Laws* 1957, c. 188) as an agreement between the two States supplementary to the Waterfront Commission Compact and amendatory thereof. This legislation was enacted pursuant to the provisions of Article XVI, Section 1 of the Compact empowering the Legislature of either State, when concurred in by the Legislature of

the other, to enact amendments and supplements to the Compact. N.J.S.A. 32-23-70. Thus, the immunity subdivision is in effect a part of the original Waterfront Commission Compact, to which Congress gave its consent.

N.J.S.A. 32:23-86(5), the immunity subdivision, is substantially the same as, and in fact was patterned after, § 2447 of the New York Penal Law. In the statement appended to S-385, which became Chapter 194 of the Laws of 1956, the purpose of the then-proposed subdivision was declared as follows:

> "[It] [a]uthorizes the 2 commissioners, acting unanimously, to grant immunity from criminal prosecution in connection with any commission investigation or proceeding, but only after notifying the appropriate prosecutor and Attorney-General and giving them an opportunity to point out why, in the particular case, the granting of immunity would not be in the public interest. Heretofore, a number of important investigations conducted by the commission in an effort to identify the real principals in kickback and other rackets on the waterfront have been thwarted by a valid claim of privilege against self-incrimination made by underlings. The commission could unseal such lips by granting immunity and compelling testimony from such underlings in cases where the public interest would thereby be served.
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> "The language of the section is practically identical with the provisions for granting immunity as codified through the efforts of the New York State Crime Commission and set forth in Section 2447 of the Penal Law of New York."

The United States Supreme Court has held that § 2447 of the New York Penal Law is valid notwithstanding a contention that it is unconstitutional to require a witness to testify upon the grant of immunity thereunder, where such witness' testimony might be used in a federal prosecution against him. *Knapp* v. *Schweitzer*, 357 U. S. 371, 2 L. ed. 2d 1393 (1958). In that case Mr. Justice Frankfurter, speaking for the Court, said:

> "In these days of the extensive sweep of such federal statutes as the income tax law and the criminal sanctions for their evasions, investigation under state law to discover corruption and misconduct, generally, in violation of state law could easily be thwarted if a State were deprived of its power to expose such wrongdoing with a view to remedial legislation or prosecution." *Id.*, 357 U. S. at 378-379, 2 L. ed. 2d at 1400.

In *Dunham* v. *Ottinger*, 243 N. Y. 423, 438, 154 N. E. 298, 302 (1926), the New York Court of Appeals, in answer to a contention that an immunity statute of that State was insufficient because it did not preclude the use of the testimony in federal criminal proceedings, said:

> "It [the statute] does give ample protection against the use of such testimony in our own tribunals, and it is perfectly well established that this is a sufficient immunity; that all that the state is required to or can do is to give immunity against its own processes, and, if it has done that, as this statute does it, it has satisfied the requirements of the Constiution."

The above rule has been stated by the United States Supreme Court in *United States* v. *Murdock*, 284 U. S. 141, 149, 76 L. ed. 210, 213 (1931):

> "[T]he lack of state power to give witnesses protection against federal prosecution does not defeat a state immunity statute. The principle established is that full and complete immunity against prosecution by the government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination."

This rule has been recognized or followed in nearly all of the states in the nation, including New Jersey where the privilege against self-incrimination rests solely on a statutory and common law foundation. See *In re Pillo*, 11 N. J. 8, 16 (1952), and authorities cited therein. It is clear that prior to the enactment of the *Evidence Act, 1960* (N.J.S.A. 2A:84A-1 *et seq.*), the Waterfront Commission was empowered by virtue of the immunity subdivision to compel a witness, upon whom immunity had been conferred, to testify notwithstanding a claim by the witness of a fear of federal prosecution. See *In re Pillo, supra; Nusbaum* v. *Newark Morning Ledger Co.*, 33 N. J. 419, 424 (1960).

The defendants contend, however, that the above statement of law has been changed by virtue of the enactment of Rule 24 (N.J.S.A. 2A:84A-18) of the *Evidence Act, 1960* which expressly extends the provilege to matters which might tend to incriminate a witness under the laws of "this State, or another State or the United States," unless "it clearly appears that the witness has no reasonable cause to apprehend a criminal prosecution."[2] See *Nusbaum* v.

Newark Morning Ledger Co., supra, at 424. They further point out that Rule 2(1) N.J.S.A. 2A:84A-16(1) provides:

> "(1) The provisions of article II, Privileges [which include Rule 24], shall apply in all cases and to all proceedings, places and inquiries, whether formal, informal, public or private, as well as to all branches of government and by whomsoever the same may be conducted, and none of said provisions shall be subject to being relaxed."

The above rules obviously express a broad and liberal policy of our State to extend the scope of the privileges accorded to witnesses in this jurisdiction. However, the Legislature has recognized that the immediate implementation of such a policy might cause unforeseen conflicts with prior existing legislation, which would lead to undesirable consequences. Therefore, it has wisely chosen to proceed cautiously in a step-by-step manner, examining each piece of existing legislation which might be affected by a change in the scope of privileges, and allowing itself an opportunity to provide a specific legislative cure for any conflicts which might arise. Those existing statutes which the Legis-

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2. It must be noted that the privilege against self-incrimination accorded to a witness by the laws of New York extends only to crimes against that State, so that a grant of state-wide immunity is sufficient to compel testimony notwithstanding a claim of federal incrimination. *Waterfront Commission* v. *Marchitto*, 217 N. Y. Supp. 2d 487 (A. D. 1st Dept. 1961), leave to appeal denied, 10 N. Y. 2d 813, 178 N. E. 2d 231 (1961), *cert. den.* 368 U. S. 954, 7 L. ed. 2d 386 (1962); *Commission of Investigation* v. *Lombardozzi*, 180 N. Y. Supp. 2d 496 (A. D. 1st Dept. 1958), *aff'd*, 5 N. Y. 2d 1026; 158 N. E. 2d 250 (1959), 6 N. Y. 2d 878, 160 N. E. 2d 125 (1959), *cert. den. sub nom. Miranda et al.* v. *Commission of Investigation of the State of New York*, 360 U. S. 930, 3 L. ed. 2d 1543 (1959), *appeal dismissed sub nom. Mancuso* v. *Commission of Investigation of the State of New York*, 361 U. S. 10, 4 L. ed. 2d 50; see *Knapp* v. *Schweitzer, supra.*

lature had already examined and wished to repeal were expressly mentioned in the *Evidence Act* as being thereby repealed. N.J.S.A. 2A:84A-45. The Legislature also provided that this court may adopt rules of evidence, N.J.S.A. 2A:84A-33, but it further provided that any such rules shall not supersede any law in conflict or inconsistent therewith unless the conflicting or inconsistent law "shall be expressly identified by footnote to any rule so adopted." N.J.S.A. 2A:84A-40. Furthermore, in order to make clear its intention to avoid any unforeseen impairment of some existing statute, the Legislature expressly provided in Rule 24(4) (N.J.S.A. 2A:84A-16(4)):

> "(4) The enactment of the rules set forth in this act or the adoption of rules pursuant hereto shall not operate to repeal any statute by implication."

In the *Report of the* [*Legislative*] *Commission to Study the Improvement of the Law of Evidence* (1956), which is an authoritative guide to the interpretation of the *Evidence Act, 1960*, it was stated at p. 15 that Rule 2(4) (quoted above):

> "... has the effect of continuing all existing statutes. This Commission feels that it is necessary to review the New Jersey statutes in detail and to specifically treat each such statute dealing with evidence. Otherwise, a wholesale repeal of many statutes, without consideration of all the implications, would result."

In view of the above, it is clear to us that although the Legislature employed a broad brush in liberally extending the scope of the rules regarding privileges, it did not intend that, without further study and action, those rules

should be applied as broadly as their language would otherwise permit or require. The question before us, therefore, is whether the expansion of the privilege against self-incrimination to include incrimination under federal law was intended by the Legislature to immediately impair the powers of the Waterfront Commission to investigate evil waterfront practices and to compel testimony after a grant of immunity from state-wide prosecution in New York and New Jersey. We think the Legislature had no such intention in mind when it passed the *Evidence Act, 1960.*

Iit is clear that in the formation of the Compact our Legislature, together with the Legislature of New York, intended to deal with joint problems existing throughout a single port area situated partly in New York and partly in New Jersey, and not with separate problems in separate ports of each State. From the standpoint of geography, commerce, and waterfront working conditions, New York Harbor is an organic whole, although politically, the harbor is split between the law-making authority of the two States. Plainly, these joint problems could not be adequately dealt with except through the coordinated efforts of the two States and the United States. The situation called for unified action. As a consequence, the Waterfront Commission, a single bi-state agency, was established with the consent of Congress to administer a joint legislative program throughout the Port of New York District, embracing the New York—New Jersey waterfront. Both States ceded certain governmental powers to this autonomous bi-state agency. These powers, as mentioned earlier in this opinion, include the power to make appropriate in-

vestigations, subpoena witnesses, and compel testimony after a grant of immunity against prosecution in both States. See *Application of Waterfront Comm. of N. Y. Harbor*, 39 N. J. Super. 33 (Law Div. 1956). The objectives of the Compact were to provide for uniform treatment of a unique, bi-state problem. Such uniformity, in order to be effective, must be maintained throughout the life of the Compact. See Frankfurther and Landis, *The Compact Clause of the Constitution—A Study of Interstate Adjustments*, 34 Yale L. J. 685, 698 (1925). In short, the Waterfront Commission, when acting within the orbit of the governmental responsibility which the States have expressly or by fair implication agreed to vest in it, was intended to be free from any unilateral restraint by either State which might thwart the Commission in its efforts to eliminate evil conditions in an area where there is extensive activity in international and interstate commerce. *Cf. State* v. *Murphy*, 36 N. J. 172, 186-187 (1961). Indeed, it is doubtful whether a single legislature could unilaterally impair the powers of the Waterfront Commission, even if it so desired. See *Green* v. *Biddle*, 8 Wheat. 1, 5 L. ed. 547 (1823); *President, Managers, &c.* v. *Trenton City Bridge Co.*, 13 N. J. Eq. 46 (Ch. 1860); see also, *Comment*, 45 Yale L. J. 324, 329 (1935).

If, as defendants contend, a witness may claim the privilege against self-incrimination with respect to federal crimes notwithstanding a conferral of bi-state immunity by the Commission, it would follow that there could be no effective investigation not only of the state aspects of such crimes but even of the non-criminal aspects of waterfront conditions since possible federal criminal overtones are

frequently present. This is so because of the nature of waterfront activity and its constant involvement with interstate commerce and other such areas of federal jurisdiction. Since the Commission cannot grant immunity as to the federal crimes it will remain helpless. The difficulty is not merely fanciful; it might well result that investigations by the Commission would be seriously hampered and, in many cases, frustrated.

Moreover, an interpretation of the Compact which is not uniform in both States would lead to results disruptive of the investigative process of the Commission. It might mean that different witnesses would have different rights depending on which side of the Hudson River they lived, or on which side the events in question took place. It might also mean that the same witnesses would have different rights depending on which side of the River they appear for examination or are prosecuted for contempt.[3] Certainly, our Legislature in adopting the *Evidence Act, 1960* never intended such results.

For the above reasons, we hold that Rule 24 of the *Evidence Act, 1960* does not entitle the defendants to refuse to testify after the Commission has conferred immunity upon them.[4]

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3. See *Waterfront Commission* v. *Marchitto*, *supra*, where the defendant, a New Jersey resident, was successfully prosecuted in the New York courts for contempt arising out of his refusal to answer questions pertaining to his activities in New Jersey, propounded at a Commission hearing in New York City.

4. Of course, it is not for us to say whether the Commission's grant of immunity would be honored in a federal criminal proceeding. In *Feldman* v. *United States*, 322 *U. S.* 487, 88 *L. ed.* 1408 (1943), *rehearing denied*, 323 *U. S.* 811, 89 *L. ed.* 646 (1944), it was held by a 4 to 3 vote that testimony of a defendant previously compelled

In view of the above conclusion, it is unnecessary for us to pass upon the Commission's contention that the defendants failed to establish in the Superior Court a reasonable basis for their asserted fear of federal incrimination.

The defendants further contend that having purged themselves of contempt under the subpoenas returnable before the Commission at its first hearing in May 1960, those subpoenas were exhausted and could not be made the basis for the proceedings before the Commission on October 27, 1961. The subpoenas had been made returnable on May 18, 1960 "and at any adjourned date thereof." As mentioned earlier in this opinion, the defendants appeared before the Commission on October 3, 1961 and refused to testify upon the ground of self-incrimination. The Commission recognized the defendants' invocation of the privilege and adjourned the subpoenas until October 10, 1961, so that the Commission could decide whether to confer immunity from prosecution upon the defendants. The following day, October 4, 1961, the parties appeared before the Superior Court, which ruled that the defendants had purged themselves of their previous contempt. However, the court further

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under the sanctions of a state immunity statute could be used against him in a federal prosecution. If *Feldman* were overruled, and state-compelled testimony held inadmissible in the federal courts, a witness would be free to testify under a state immunity grant without running the risk of a subsequent federal prosecution based upon such compelled testimony. In *Kroner, Self Incrimination: The External Reach of the Privilege*, 60 *Colum. L. Rev.* 816, 837, *n* 155 (1960), the author observes: "That this [overruling *Feldman*] is not unlikely is suggested by the fact that 4 Justices now on the Court appear to favor such a result. Justices Black and Douglas were among the dissenters in *Feldman*. See 322 *U. S.* at 494. Mr. Chief Justice Warren, in dissent and Mr. Justice Brennan, in a concurring opinion, indicated in *Knapp* v. *Schweitzer* that the time was ripe for review of the *Feldman* rule. See 357 *U. S.* at 381."

ruled that the subpoenas were still in effect and noted that the Commission had adjourned the subpoenas until October 10, 1961. Counsel for the defendants agreed that they would appear at the appointed time, and the court entered an order to that effect. The hearing of October 10, 1961, was adjourned until October 27, 1961, with the consent of all the parties, at which time the defendants appeared. Since the court ordered the defendants to appear and they consented to such order, and did appear before the Commission on October 27, 1961, their contention that the power of the subpoenas to compel their appearance had been exhausted is clearly without merit.

The defendants also contend that the Commission's grant of immunity was invalid because: (1) the letters sent by the Commission to the officials of New York and New Jersey advising them of the Commission's intention to confer immunity upon the defendants were not sufficiently informative "to enable those officers to arrive at any rational judgment as to whether the case is an appropriate one for concurrence by such law officers in the Commission's proposed granting of immunity"; (2) not all such law officers having an official interest in the subject matter were notified; (3) the Commissioners' appointment of designees to confer immunity upon the defendants was an improper delegation of power;[5] and (4) the Commission did not make the grant of immunity explicit as to each question asked.

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5. The defendants hint that the Legislature could not constitutionally delegate to the Commissioners themselves the power to grant immunity. However, they do not press this point and in any event, we would not consider it since the Attorney-General was not notified that the constitutionality of a statute was under attack. R. R. 4:37-2; *Bergen County Sewer Authority* v. *Little Ferry*, 5 *N. J.* 548, 554 (1950).

N.J.S.A. 32:23-86(5) provides that the grant of immunity by the Commission shall be "upon 24 hours' prior written notice to the appropriate Attorney-General of the State of New York or the State of New Jersey, and to the appropriate district attorney or prosecutor having an official interest therein." Pursuant to this provision, the Commission mailed letters to the Attorneys-General of New York and New Jersey, the District Attorney of New York County, and the Prosecutor of Hudson County. These letters set forth the Commission's intention to confer immunity upon the defendants in an investigation "into a strike that took place at the American Export Line Terminal in Hoboken, New Jersey on May 16 through May 20, 1960." The letters further recited the history of the proceedings, including the fact that the defendants refused to answer questions concerning their participation in the strike on the grounds that their answers might tend to incriminate them. Although there is nothing in the immunity subdivision requiring receipt of replies to the letters of notice, letters were received from both Attorneys-General and from the District Attorney of New York County, informing the Commission that these officials had no objections to the proposed grant of immunity to the defendants. (No reply was received from the Hudson County Prosecutor.)

Although, as said above, the defendants contend that the Commission's letters of notice were not sufficiently informative, they do not suggest what further facts would be necessary in the circumstances. Since the letters clearly informed the officials as to the specific nature of the inquiry, and gave them an opportunity to be heard if they saw fit in order that they might persuade the Commission to with-

hold the granting of immunity, we think the letters were amply sufficient to comply with the statute. In any event, the immunity granted under the subdivision protects the defendants even if the law officials were not properly notified. The requirement of giving notice to the officials is not a *sine qua non* to the grant of immunity. We agree with what was said in *Commission of Investigation* v. *Lombardozzi, supra,* 180 N. Y. S. 2d at 503, where the court was construing an immunity statute substantially identical to the one *sub judice:*

> "When requested in these proceedings, the Commission informed each appellant that it had afforded the Attorney-General and the appropriate district attorney an opportunity to be heard in compliance with section 7 but refused to specify the details thereof. We find no error in that decision. The grant of immunity was absolute. It appears to have been the legislative intent that before such extensive power was exercised by the Commission, as a matter of governmental comity, it should give certain public prosecutors an opportunity to be heard to enable them to induce the Commission to withhold the granting of such immunity for reasons advanced, which might have been unknown, or overlooked by the Commission. But the opportunity to be heard was not a restriction on the power. If objections were made by prosecutors and not heeded by respondent, the witness would not be the less protected. Assuming the Commission acted improvidently in the face of objections it might be subject to correction in an official forum or otherwise. Such eventual correction, regardless of what effect it might have on the Commission, individually, or as a body, could not detract from the immunity already

> granted. Thus, in stating that the Attorney-General and appropriate District Attorney had been afforded an opportunity to be heard, the respondent sufficiently complied with the statute. It was not for appellants to go further into the matter. When the immunity is granted it is not at the peril of the witness but at the peril of the Commission if it fails to comply with the requirements of the statute."

We find no merit in the defendants' contention that not all of the law officials "having an official interest" in the proposed grant of immunity were notified in compliance with the immunity subdivision. The defendants do not suggest which other law officials should have been notified by the Commission. Moreover, what has been said in the preceding paragraph adequately answers this contention.

We further find no basis for the defendants' attack upon the validity of the appointment of the designees by the Commissioners to act in their places for the purpose of conferring immunity. N.J.S.A. 32:23-86(5) provides that immunity may be conferred by the Commissioners "or their designees appointed pursuant to the provisions of section 3 of article III of this act." In turn, this latter section (N.J.S.A. 32:23-9) provides that though the Commissioners can act only by unanimous vote of both members, "Any member may, by written instrument filed in the office of the commission, designate any officer or employee of the commission to act in his place as a member whenever he shall be unable to attend a meeting of the commission." Pursuant to these provisions, Commissioners Thompson and Tyler designated William P. Sirignano and Myles J. Ambrose, respectively, to act in their places as members

of the Commission in the present investigation on any occasion when the Commissioners were unable to attend, and to confer immunity upon the defendants. The defendants point out that the Commissioners' instruments of designation were executed on October 13, 1961, were unlimited as to time, and were actually put to use by the designees on October 27, 1961. They argue that a Commissioner as "a gubernatorially-appointed official [should not] be permitted to strip himself of what is probably his most solemn statutory function in this indiscriminate manner."

The short answer to this contention is that here there has been no such stripping of power by the Commissioners; the designation is clearly limited to a specific investigation, for a specific purpose, and may be exercised only on those occasions which the Commissioners themselves are unable to attend. There is nothing in the record to suggest that the Commissioners were free to attend the hearing on October 27, 1961.

We find no substance to the defendants' final challenge to the validity of the Commission's grant of immunity, *i.e.*, that the grant was not explicit as to each question on which the defendants' claims of privilege were overruled. The immunity subdivision provides: "In any investigation, . . . if a person refuses to answer a question . . . on the ground that he may be incriminated thereby, and, notwithstanding such refusal, an order is made . . . [after due notice to appropriate officials and by the unanimous vote of both commissioners or their designees] that such person answer the question . . . , such person shall comply with the order. If such person complies with the order, and if, but for this

subdivison, he would have been privileged to withhold the answers given . . . , then immunity shall be conferred upon him. . . ." It is clear from the above that the immunity is conferred by operation of the statute, and not by some ritualistic statement of the examining officer. In the proceedings before the Commission on October 27, 1961, the provisions of the immunity subdivision were read and explained to the defendants and their counsel. Each time a defendant refused to answer a question on the ground of self-incrimination, the Commissioners' designees unanimously ordered the defendant to answer that question notwithstanding his claim of the privilege. This procedure complied with the statute and was therefore sufficient to cloak the defendants with the statutory immunity.

The defendants next contend that they were denied due process of law by the Commission's refusal to adequately apprise them as to the "purpose and pertinency" of the investigation. The Supreme Court of the United States has made clear that a witness before an investigative body is entitled to be adequately apprised of the subject matter of the investigation, and of the manner in which the questions asked are pertinent thereto, in order that he may determine whether he would be within his rights in refusing to answer. *Scull* v. *Commonwealth of Virginia*, 359 U. S. 344, 3 L. ed. 2d 865 (1959); *Watkins* v. *United States*, 354 U. S. 178, 1 L. ed. 2d 1273 (1957); see *In re Application of Waterfront Com.*, 32 N. J. 323, 336-338 (1960).

The defendants acknowledge that when they appeared before the Commission on October 3, 1961 and thereafter, they stood apprised that the purpose of the Commission's May 1960 investigation was to inquire into the work stop-

page of May 16-20, 1960 on the American Export Lines' piers in Hoboken, in order to determine whether the work stoppage constituted a threat to the port-watchman security system by preventing Markley from functioning on the piers, and whether any violations of the Compact were involved. However, the defendants contend that their right to an adequate apprisal extends beyond the above recital of purpose. They urge that they are entitled to be "apprised" of any damaging information which the Commission might have against them, and to be confronted with any accusatory witnesses, in order that they might have "an opportunity to make a rational judgment of the necessity and advisability of invoking the self-incrimination privilege"; that they should not be placed "in the position of having to decide in the dark whether or not they should incur the grievous legal and social disadvantage of invoking the privilege of self-incrimination." The defendants cite no authority for this proposition, conceding it is "*de novo* in any jurisdiction." We think this point is wholly without substance. The defendants' argument assumes that the questions propounded called for an answer which might tend to incriminate them, and as to which, therefore, they might properly assert their privilege. Their contention, in effect, is that some incriminating questions might safely be answered if they knew beforehand that the Commission did not have enough other damaging information to make a future prosecution likely. In other words, they do not wish to be put in the position where they must make the distasteful choice of invoking the privilege unless they are certain it is necessary in order to protect themselves from a future prosecution.

We know of no rule, constitutional or otherwise, which provides that when, as here, the subject matter of the inquiry and the pertinency thereto of questions have been made clear to a witness, he is entitled to be given further information before deciding whether to exercise his privilege against self-incrimination. If the Commission were thus compelled to disclose the contents of its files, then the whole investigative process would be subject to scrutiny before the investigation had even gotten under way, and in most cases the investigation would be thwarted. See *In re Application of Waterfront Com., supra,* 32 N. J. at 334. Investigations to determine whether there are evil conditions on the waterfront are too important to be shackled by recalcitrant witnesses, whose privileges against self-incrimination are amply protected, merely because of some asserted disadvantage which would seem at best to be of a nebulous nature. Due process of law does not require that the niceties of personal feelings be allowed to obstruct the search for truth. *Cf. In re Vince,* 2 N. J. 443, 457 (1949).

In connection with the defendants' contentions with regard to the Commissioners' appointment of designees, the adequacy of notice to the law officials of both States, and their demand for apprisal as to any damaging information or accusatory witnesses, the defendants moved before the trial court for discovery in the form of interrogatories and a bill of particulars. In view of our above disposition of these contentions, however, it follows that the defendants were not entitled to any further information regarding them. The defendants' discovery motions also sought information with regard to whether the Commission's present investigation was within its statutory jurisdiction. The

defendants are foreclosed from raising that issue in these proceedings, however, since it was the sole subject of the defendants' first appeal to this court, wherein we held that the Commission had jurisdiction to conduct the present investigation. *In re Application of Waterfront Comm. of N. Y. Harbor*, 35 N. J. 62 (1961). Therefore, the trial court was correct in denying the defendants' motions for discovery.

Nor was there error in the trial court's denial of the defendants' demand for a jury trial. Both R.R. 3:8-3, having to do with criminal contempts, and R.R. 4:87-3, having to do with contempts generally, upon which the defendants relied in their demand, specifically provide that "[t]he court in its discretion may try the issue without a jury." See *Green* v. *United States*, 356 U. S. 165, 2 L. ed. 2d 672 (1958). We find that the trial court did not abuse its discretion in hearing the matter without a jury.

The defendants also contend that the commingling of the criminal and the civil contempt proceedings before the trial court was error, and that such error was compounded by the restrictive nature of the trial. We are satisfied that the defendants had a fair trial with regard to the issue of civil contempt, *i.e.*, whether they should be incarcerated until they have answered the questions propounded by the Commission. The defendants do not dispute the facts that were presented to the trial court, and their contentions as to the legality of the proceedings before the Commission have already been disposed of in the course of this opinion. We therefore conclude that the trial court properly found the defendants guilty of civil contempt.

However, we think that the judgments holding the defendants guilty of criminal contempt must be reversed. In

N. J. Dept of Health v. *Roselle*, 34 N. J. 331, 344 (1961), we expressed grave doubts whether a defendant's rights could be adequately protected in a "double-barrelled proceeding," where charges of both civil and criminal contempt are tried in a common hearing. Although the defendants did not specifically object to the dual aspects of the trial below, they did make known their desire to have an opportunity to introduce evidence on the question of intent to commit a criminal contempt. From our examination of the record, it appears that the defendants were exposed to criminal punishment without being afforded the opportunity to present evidence in their defense, if any, and in extenuation of the offenses charged and in mitigation of the penalties to be imposed. The trial court's refusal to hear any evidence, except for the limited purpose of pinpointing the areas of possible federal incrimination, denied the defendants the safeguards to which they were entitled as persons charged with criminal offenses. See *Cooke* v. *United States*, 267 U. S. 517, 537, 69 L. ed. 767, 774 (1924); *N. J. Dept. of Health* v. *Roselle, supra*, at 338-340.

For the reasons expressed above, the judgments of the Law Division insofar as they hold the defendants guilty of criminal contempt are reversed and the matters are remanded to the Law Division for new trials. The judgments of the Law Division are affirmed insofar as they order the defendants to be incarcerated until they make "responsive answers to the aforesaid questions [set out in the judgments] before the members of the Waterfront Commission of New York Harbor, or their designees . . . , as well as until such fine[s]" ($50.00 each) have been paid.

A True Copy

John H. Gilder
Clerk

APPENDIX B

Opinion of Superior Court of New Jersey, Law Division, Hudson County, on Judgment Here Sought to be Reviewed

ORAL DECISION (NOVEMBER 22, 1961)

(2) The Court: I will first consider the motion presented under the Order to Show Cause pusuant to R. R. 4:46-5(c), requiring the respondents, William Murphy and John Moody, Sr., to show cause before this Court why they should not be punished for a contempt of Court.

These respondents also move for an order quashing the subpoenas which have been issued heretofore requiring their attendance before the Waterfront Commission of New York Harbor at its offices, 15 Park Row, New York City, New York.

These two motions, by consent of counsel, were consolidated.

The defendants further move for a bill of particulars and seek, under adverse conditions, a jury trial in these proceedings for civil and criminal contempt.

The witnesses, or the respondents, also move for answers to certain interrogatories which they demand of the Commission.

The events leading up to this Order to Show Cause and the various motions are as follows:

One James H. Markley was an investigator for the Commission, assigned principally to cover (3) the piers and terminals of the American Export Lines in Hoboken. On or about May 16, 1960, Markley left the employ of the Waterfront Commission in order to work for American Export

as a security officer. To fulfill his security functions, Markley obtained a license from the Commission permitting him to operate as a port watchman.

On May 16, 1960, the day Markley was to commence work for American Export, the longshoremen and checkers employed by American Export in Hoboken did not report for work. With the exception of the morning of May 17th, the work stoppage continued until May 25th. The striking employes were members of Hoboken Local number 2 of the Independent Longshoremen's Association (ILA). Respondent Moody is an organizer for the ILA in New Jersey, and respondent Murphy is business agent for Local number 2.

The Waterfront Commission had information that the work stoppage was "a concerted effort to keep James H. Markley off the piers of the American Export Lines." Accordingly, it instituted an investigation to determine whether any persons registered or licensed by the Commission were (4) violating the Waterfront Commission Act (N. J. S. A. 32:23-1, etc.) by coercing an employer (American Export) to limit the functions of or discharge a licensed port watchman (Markley).

In connection with the investigation the Commission served subpoenas ordering the respondents to appear and testify. When these gentlemen appeared on May 19, 1960, at the Waterfront Commission offices at 15 Park Row, New York City, New York, they were told that they were subpoenaed for the purposes of making an investigation under Article IV of the Waterfront Commission Compact and to ascertain facts surrounding a work stoppage at Piers A, B, and C, Hoboken, New Jersey.

Respondent John Moody, Sr., gave his name and address, testified he was a union official, and refused to answer the following questions:

"Question: Are you an official of any ILA Local?"

"Question: Mr. Moody, will you tell us what local you are an official of?"

"Question: Mr. Moody, what position do you hold with the local ILA that you are affiliated with?"

"Question: All right, Mr. Moody, would you (5) tell us when you first received news of any labor trouble on Piers A, B, and C in Hoboken?"

"Question: Mr. Moody, within the last weeks have you attended any conferences with the officials of the American Export Line with respect to the work stoppage at Piers A, B, and C in Hoboken?"

"Question: Have you had any conversation with Captain Andrews, Leland Andrews, of American Export Line with reference to the stoppage this week at Piers A, B, and C in Hoboken, New Jersey? When I say this week, I mean from May 16th to the present."

"Question: Mr. Moody, have you had any discussions or conversations with Captain Blackledge of American Export Lines concerning the refusal to work at Piers A, B, and C of longshoremen in that particular—on those particular piers this week?"

"Question: Have you had any conversations with Michael McNamara, Senior, Hiring Agent of the American Export Lines, concerning the work stoppages at Piers A, B, and C that have occurred since May 1, 1960, to the present?"

"Question: Mr. Moody, have you at any time (6) either prior to the work stoppage which commenced on May 16, 1960, or before that time or after that time, did you at any time issue orders for a work stoppage at Piers A, B, and C?"

"Question: Did you, before May 16th, ever give any orders for the commencement of a work stoppage at Piers A, B, and C?"

"Question: Have you since May 16th, in other words, May 16th, 17th, 18th, and 19th, have you on these particular days issued any instructions concerning work stoppages and instructions, now both either commencing or ceasing the stoppages at Pier A, B, and C in Hoboken?"

"Question: Have you had any conversations with anyone since May 16, 1960, to the present concerning the work stoppages at Piers A, B, and C?"

"Question: What is your function with the local in Hoboken?"

"Question: What is your position with the union?"

"Question: Mr. Moody, were you present on Piers A, B, and C, Hoboken, on Monday, this week?"

"Question: Were you at the piers on Tuesday?"

Respondent Murphy testified that he was a (7) business agent of Local number 2 and represented members of the local working at the American Export facilities in Hoboken. He stated that he knew the longshoremen did not work on May 16, 1960, and that it was common knowledge for the ten day preceding May 16th that things were not normal at the American Export piers.

Appendix B—Opinion of Superior Court of New Jersey

Respondent Murphy refused to answer the following questions:

"Question: Now, for the record, Mr. Murphy, did you have anything to do with causing the strike that is presently pending at the American Export Line?"

"Question: Did you in any way participate in the work stoppage to compel the American Export Line to discharge or to limit the duties of their employee James Markley?"

Mr. Murphy refused to give any further testimony to answer the foregoing questions.

Mr. Murphy and Mr. Moody based their refusals to testify on the following grounds:

1. The work stoppage is a matter which the Commission has no statutory authority to investigate.

2. The work stoppage is a matter over (8) which the National Labor Relations Board has exclusive jurisdiction.

3. The Commission has no right to investigate the work stoppage since civil litigation may ensue as a result thereof. (The American Export Lines had threatened to sue the ILA).

4. The Commission's investigation seeks to inquire into a privileged communication between union and management and/or between union representatives.

Neither defendant asserted his privilege against self-incrimination.

The Commission's interrogator overruled the defendants' objection to the question, directed them to answer, and informed them that continued recalcitrance would subject them to contempt proceedings. Defendants persisted in their refusal.

Thereupon the Commission instituted contempt proceedings against the defendants, Murphy and Moody, in the Superior Court of New Jersey, Hudson County, which by judgment dated June 20, 1960, adjudged Murphy and Moody guilty of civil contempt and ordered that they be fined $50.00 each and that they be incarcerated until they (9) obeyed the Commission's subpoenas. The judgment of contempt against Murphy and Moody was affirmed by the Supreme Court of New Jersey by mandate dated May 22, 1961. A copy of the printed record upon the appeal is annexed as Exhibit C to plaintiff's moving papers herein, and a copy of the mandate of the Supreme Court as Exhibit D.

Thereafter Murphy and Moody appealed to the Supreme Court of the United States and applied to the Supreme Court of New Jersey for a stay pending such appeal, which application was denied by the Supreme Court of New Jersey on August 14, 1961. Appellants then applied to Mr. Justice Brennan of the United States Supreme Court for a stay pending appeal, which application was denied by Mr. Justice Brennan. Application was then made to Mr. Justice Brennan for reconsideration of his denial of a stay and for oral argument in connection therewith. This second application was also denied by Mr. Justice Brennan on September 29, 1961.

The defendants, Moody and Murphy, appeared before this Court on October 3, 1961, pursuant to the mandate of the Supreme Court of New Jersey. At that time they were directed to appear at the (10) offices of the Commission pursuant to the Commission's subpoenas. They did so appear as directed on October 3, 1961.

Again the defendants were advised that the purpose of the investigation was to inquire into the factual background of the work stoppage that took place on May 16, 1960, and through May 20th at Piers A, B, and C in Hoboken, to inquire whether or not a violation of the Compact took place.

Mr. Murphy testified that he was business agent for Local 2 of the International Longshoremen's Association. Mr. Murphy refused to answer the following questions:

"Question: And as such business agent, what are your duties, Mr. Murphy?"

"Question: Mr. Murphy, when did you first become aware that on May 16, 1960, a work stoppage had taken place at Piers A, B, and C, Hoboken, the American Export Line Terminal?"

"Question: Did you have any conversations, Mr. Murphy, with union officials of the ILA prior to May 16, 1960, concerning the presence of one James Markley on Piers A, B, and C as a security officer for the American Export Lines?"

(11) "Question: Did you have any conversations with the officials of American Export Line on May 16, 1960, May 17, 1960, May 18, 1960, May 19, 1960, and May 20, 1960, concerning the presence of James Markley as a security officer on Piers A, B, and C, Hoboken?"

"Question: Mr. Murphy, did you at any time during the period covered by the dates May 16th to May 20, 1960, appear on the terminal or in the offices of the terminal at Piers A, B, and C, Hoboken, in connection with the work stoppage that resulted on the days May 16th to May 20th?"

"Question: Mr. Murphy, did you at any time prior to May 16, 1960, speak with one Michael McNamara, Hiring

Agent at the American Export Lines Piers, concerning the presence of James Markley as a security officer on those particular piers?"

John Moody, Sr., gave his address and testified that he was an organizer of the ILA in the State of New Jersey. Mr. Moody, Sr., refused to answer the following questions:

"Question: In that position and in respect to that position, what are your duties, Mr. Moody?"

"Question: Mr. Moody, would you tell us when (12) you first became aware of labor trouble at Piers A, B, and C in Hoboken on or about May 16th, during the period covered from May 16, 1960, through May 20, 1960?"

"Question: Mr. Moody, with respect to the work stoppage that occurred on May 16, 1960, at Piers A, B, and C in Hoboken, did you have any conversations with any of the union officials about the presence of one James Markley as a security officer on the said terminal?"

"Question: Mr. Moody, did you have any conversations covering the work stoppage that occurred on May 16, 1960, with officials of American Export Line, specifically Leland Andrews or others, such as Captain Blackledge, concerning the presence of James Markley on the terminal as a security officer?"

"Mr. Moody, were you physically present at Piers A, B, and C in Hoboken on May 16, 17, 18, 19 and 20, 1960?"

"Question: Mr. Moody, did you have any conversations with Michael McNamara on May 16, 17, 18, 19, or 20, 1960, concerning the presence of Markley, James Markley, a security officer on the Hoboken Terminal?"

(13) "Question: Mr. Moody, did you ever meet with any of the executives of American Export Lines with respect to settlement of the dispute concerning Markley's presence as a security officer on Piers A, B, and C in Hoboken?"

"Question: Did you ever speak to Michael McNamara prior to May 16, 1960, concerning the presence of James Markley as a security officer on Piers A, B, and C, Hoboken?

"Question: Now, Mr. Moody, did you at any time issue orders for a work stoppage on Piers A, B, and C, Hoboken, because of the presence of James Markley on Piers A, B, and C?"

"Question: Mr. Moody, have you since May 16, 1960, issued any instructions concerning work stoppages either commencing or stopping the stoppage at Piers A, B, and C, Hoboken?"

The respondents in this case, Murphy and Moody, based their refusal to answer the set out questions on the grounds that they had not been properly and adequately apprised of the purpose of the investigation and on their privilege of self incrimination.

The subpoena was adjourned to October 10, 1961. The Commission was going to determine (14) whether it wished to confer immunity upon the witnesses and to provide for appropriate notice to the district attorneys involved.

On October 4, 1961, the respondents, William Murphy and John Moody, Sr., appeared again before this Court at which time this Court decided that they had purged themselves of their contempt, as the Commission had recognized as a proper ground and legal basis for their refusing to answer those particular questions, as the records shows, the basis of their constitutional right that their answers might

tend to incriminate them. This Court further found the subpoenas still to be effective and returnable on October 10, 1961.

On October 27, 1961, the duly adjourned return date of the Commission's subpoenas, the defendants, Murphy and Moody, appeared at the offices of the Commission. The Commission introduced into evidence the following:

Designations authorizing Myles J. Ambrose to act in the place of Commissioner Harold R. Tyler, Jr., to confer immunity upon William Murphy and John Moody, Sr., marked Commission's Exhibits 1 and 2.

Designations authorizing William P. Sirignano (15) to act in the place of Commissioner David C. Thompson to confer immunity upon William Murphy and John Moody, Sr., marked Commission's Exhibits 3 and 4.

Letters of notice of granting immunity to William Murphy and John Moody, Sr., which were mailed to the following:

Honorable Lawrence Whipple, Prosecutor of Hudson County.

Honorable David Furman, Attorney General of New Jersey.

Honorable Frank Hogan, District Attorney of New York County.

Honorable Louis Lefkowitz, Attorney General of New York.

Also offered into evidence by the Commission were the following:

Letter from David D. Furman acknowledging receipt of the previously offered letter.

Letter from Frank Hogan acknowledging receipt of the same letter.

Letter from office of Louis Lefkowitz regarding the same letter.

However, no acknowledgment was received from Lawrence Whipple, Prosecutor of Hudson County.

(16) The respondents, or the defendants, William Murphy and John Moody, Sr., were apprised that the investigation concerned a stoppage of work that occurred on the morning of May 16, 1960, at the Hoboken Terminal of the American Export Lines, Piers A, B and C in Hoboken and, further, that the parties were there to discover whether there were any violations of the Compact.

The defendants were then informed of section 5-b(5) of the Waterfront Commission Act and its passages wherein the power to grant immunity from prosecution is set forth were read to them. They were then instructed as follows:

"If a question is asked of you and you honestly believe the answer may incriminate you, you may plead that privilege and you do not have to answer the question, except that where the Commission orders you and directs you to answer that question, you must answer it. Only you get this benefit from that direction: that any transaction concerning which you testify, you will be held immune from that and any answer you may give or evidence that you produce cannot be used against you."

(17) No grant of immunity from federal prosecution was expressed.

Mr. William Murphy refused to answer the following questions:

"Question: Are you an official of the ILA, Independent?"

"Question: I direct your attention to a work stoppage that occurred on Monday, May 16, 1960, at Piers A, B, and C, Hoboken, the American Export Lines Terminal. Did you have any prior knowledge that a work stoppage would occur Monday, May 16, 1960, at the said terminal?"

"Question: Mr. Murphy, who were the persons that gave you the information about the work stoppage on May 16, 1960, at the Hoboken Terminal of the American Export Line?"

"Question: Mr. Murphy, did you at any time give orders to longshoremen or others such as shop stewards that a work stoppage was to take place on May 16, 1960, at the American Export Line Terminal in Hoboken?"

"Question: Mr. Murphy, was the work stoppage that took place on the American Export Line Pier on May 16, 1960, related to the presence of one James Markley on the piers as a (18) security officer?"

"Question: Mr. Murphy, do you know whether the work stoppage that took place on May 16, 1960, at the American Export Line Terminal was related to the presence of one James Markley on the piers as a security officer?"

"Question: Mr. Murphy, did you have any conversations with any union officials of the ILA prior to May 16, 1960, about the presence of James Markley on the Hoboken Terminal as security officer?"

"Question: On May 16, 1960, did you, Mr. Murphy, have a conversation with one Leland Andrews concerning this work stoppage that took place on May 16, 1960, at the American Export Line Pier?"

"Question: Did you in the conversation with Mr. Andrews on the 16th of May, 1960, reach any agreement over the presence of Mr. Markley on the Hoboken Terminal of the American Export Lines in Hoboken?"

"Question: Mr. Murphy, on the morning of May 17, 1960, were you on the American Export Line Hoboken Terminal?"

"Question: Mr. Murphy, on May 17, 1960, at (19) the Hoboken Terminal of the American Export Line did you have a conversation with one Michael McNamara?"

"Question: Mr. Murphy, on the morning of May 17, 1960, at the American Export Line Terminal in Hoboken did you have a conversation with one Frank Rump?"

"Question: Mr. Murphy, on the morning of May 17, 1960, did you have a conversation with one Carmen Bruno?"

"Question: Mr. Murphy, on the morning of May 17, 1960, at the Hoboken Terminal did you have a conversation with one Eric Lumpke?"

"Question: Mr. Murphy, on the morning of May 17, 1960, did you have a meeting with officials of the American Export Line?"

"Question: Did you at that time reach any agreement concerning the presence of Mr. Markley on the Hoboken Terminal as a security officer?"

"Question: Mr. Murphy, did you have a meeting with the Executive Vice President of American Export Line at the offices of the American Export Line at 39 Broadway in New York City in August, 1960?"

(29) "Question: Mr. Murphy, did you at that meeting with the Executive Vice President of the American Export

Line state that if Mr. James Markley walked on the Piers A, B, and C in Hoboken there would be a strike?"

"Question: Did you, Mr. Murphy, ever discuss or give any orders to any shop stewards or officials of your local to pull the men out on Piers A, B, and C in the event Mr. Markley walked onto the piers in May of 1960 in the performance of his duty as a security officer for the American Export Lines?"

"Question: Mr. Murphy, do you know now whether Mr. Markley has ever, since May, 1960, walked on the piers in Hoboken, New Jersey, of the American Export Lines in connection with his duties as a security officer for that company?"

"Question: Mr. Murphy, do you know if Mr. Markley was at any time employed by this commission in any capacity whatsoever?"

"Question: Mr. Murphy, is it not true that the statement you made to the Vice President of the American Export Line in August, 1960, that if Mr. Markley steps on the Hoboken Terminal there would be a strike, is still in force today and (21) that Mr. Markley cannot step on the pier today in pursuance of his duties as a security officer?"

"Question: Mr. Murphy, did you in August, 1960, tell the Executive Vice President of the American Export Line that if Mr. Markley stepped on the piers there would be a walkout?"

"Question: In the event that Mr. Markley walked on the piers of Hoboken, New Jersey, today on the American Export Lines would you order the membership of the ILA present there off the piers?"

John Moody, Sr., gave his name and address. Mr. Moody, Sr., however, refused to answer the following questions:

"Question: Are you an official of the International Longshoremen's Association Independent or the International Longshoremen's Association which is affiliated with the AFL-CIO?"

"Question: Mr. Moody, I direct your attention to a work stoppage that occured on Monday, May 16, 1960, at Piers A, B, and C, Hoboken, the American Export Lines Terminal. Did you have any prior knowledge that that work stoppage was to take place on Monday, May 16, 1960, at (22) that terminal?"

"Question: Mr. Moody, would you tell the Commission the source of the knowledge that you had concerning the work stoppage at Piers A, B, and C, Hoboken, in May, 1960?"

"Question: Mr. Moody, did you at any time prior to May 16, 1960, give orders to any longshoremen, shop stewards, or others to commence a work stoppage on Monday, May 16, 1960, because of the presence of one James Markley on the piers as security officer?"

"Question: Mr. Moody, did you have any conversations with any other union official of the International Longshoremen's Association prior to May 16, 1960, about calling a strike concerning James Markley's presence on the Hoboken Terminal as a security officer?"

"Question: Did you have a conversation about calling a strike during the week of May 16, 1960, with one Mr. Gleason of the ILA?"

"Question: On the 17th of May, 1960, were you present on the terminal in Hoboken, which is called the American Export Lines Terminal? Were you present?"

"Question: Did you on that date, May 17, (23) 1960, tell the shop stewards, Frank Rump, Carmine Bruno, Eric Lumpke, to call the longshoremen out on strike because of Mr. Markley on the piers as a security officer?"

"Question: Did you attend a meeting on May 17, 1960, at the offices of the American Export Lines at the Hoboken Terminal? Did you attend such a meeting?"

"Question: Did you at that meeting state to Leland Andrews, another official of the American Export Lines, who attended the meeting, if Markley walks on the piers there would be a work stoppage?"

"Question: Did you either before May 16, 1960, or during the week of May 16, 1960, speak to Michael McNamara concerning a work stoppage at the American Export Lines Terminal over the presence of Mr. Markley at the piers?"

"Question: Prior to May 16, 1960, or during the week of May 16, 1960, did you have a conversation with Michael McNamara concerning a work stoppage to be called on May 16, 1960, over the presence of James Markley on the Hoboken Terminal as a security officer?"

"Question: Do you know Mr. William Murphy?"

(24) "Question: Do you see Mr. Murphy sitting in this room?"

"Question: Do you know Leland Andrews, Mr. Moody?"

"Question: Do you know Mr. Lyle Bull, Executive Vice President of the American Export Lines?"

"Question: Did you at any time, either in Hudson County, in the State of New Jersey, or in the County of

New York in the State of New York, have any discussion with any executives of the American Export Lines, concerning Mr. Markley's employment with that shipping company?"

"Question: Do you know whether Mr. Markley has ever been on the piers in the performance of his duties as security officer of the American Export Lines since his employment in May of 1960?"

The respondents were directed by the designees of the Waterfront Commissioners to answer these questions. The defendants, or respondents, were told they were granted immunity as to their testimony.

The defendants refused to answer any of the above questions in spite of the direction to (25) answer by the said designees and the promise of immunity, and based their refusal on the grounds that the Commission failed to set forth fully the purposes of the investigation, a failure of due process, and they further invoked the privilege of self incrimination.

The Waterfront Commission now seeks to have the defendants adjudged guilty of contempt of court, civil and criminal, for their failure to answer the questions set out after they had been granted immunity from prosecution by the Commission.

In opposition, the defendants claim the purported grant of immunity is invalid because the Commission failed to comply with the statute which grants immunity, N. J. S. A. 32:23-86(5) in that proper notice was not sent to the various law officers of the two states, in that the grant of immunity was not explicit as to each question and, further, in that it was improper for the designees of the Commissioners of

the Waterfront Commission to grant this immunity. The defendants further maintain that they were denied due process in that the Commission failed to disclose any damaging information it had and (26) further failed to produce accusatory witnesses.

The defendants, or respondents, rely strongly on N. J. S. A. 84 A, Rules of Evidence, and contend that Rule 24 of that section, N. J. S. A. 2A:84 A-18, extends the definition of incrimination to crimes against the United States and other states and that Rule 25 of that section wherein is provided "Subject to Rule 37, every natural person has a right to refuse to disclose in an action or to a police officer or other official any matter that will incriminate him or expose him to a penalty or a forfeiture of his estate" thereby provides a privilege of self-incrimination which includes federal incrimination as well as state incrimination. This is one of the contentions of these witnesses, or defendants.

The defendants contend that since the purported immunity granted by the Commission does not apply to immunity from federal incrimination, it is not coextensive with the privilege against self-incrimination invoked and is, therefore, unconstitutional.

The defendants further maintain that they have reasonable cause to apprehend a criminal (27) prosecution and set out numerous federal statutes it may be claimed they violated.

The defendants claim a failure of due process of law in that they were not properly apprised of the subject matter of the investigation, as I have previously stated.

The Waterfront Commission Act was passed by the State of New Jersey in 1953 (R. S. 32:23-1 etc.).

Some of the general powers of the Commission are as follows:

"Article IV.

"In addition to the powers and duties elsewhere prescribed in this compact, the Commission shall have the power

"8. By its members and its properly designated officers, agents and employees to administer oaths and issue subpoenas throughout both states to compel the attendance of witnesses and the giving of testimony and the production of other evidence.

"11. To make investigations, collect and compile information concerning waterfront practices generally within the Port of New York District and upon all matters relating to (28) the accomplishment of the objectives of this Compact.

"13. To make annual and other reports to the governors and legislatures of both states containing recommendations for the improvement of the conditions of waterfront labor within the Port of New York District, for the alleviation of the evils described in Article I and for the effectuation of the purposes of this Compact." (Waterfront Commission Act, Part 7, Article IV, Sections 8, 11, 13, N. J. R. S. 32:23-10.)

"Witness shall mean any person whose testimony is desired in any investigation, interview or other proceeding conducted by the Commission pursuant to the provisions of this Act." N. J. R. S. 32:23-85.

N. J. R. S. 32:23-86 provides:

"In addition to the powers and duties elsewhere prescribed in this Compact, the Commission shall have the power

"To confer immunity in the following manner: In any investigation, interview or other proceeding conducted under oath by the Commission or any duly authorized officer, (29) employee or agent thereof, if a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, and notwithstanding such refusal, an order is made upon twenty-four hours' prior written notice to the appropriate attorney general of the State of New York or the State of New Jersey, and to the appropriate district attorney or prosecutor having an official interest therein, by the unanimous vote of both members of the Commission or their designees appointed pursuant to the provisions of section three of article III of this Act, that such person answer the questions or produce the evidence, such person shall comply with the order. If such person complies with the order and if but for this subdivision he would have been privileged to withhold the answer given or the evidence produced by him, then immunity shall be conferred upon him as provided for herein.

"Immunity as used in this subdivision means that such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or (30) thing concerning which, in accordance with the order of the unanimous vote of both members of the Commission or their designees appointed pursuant to the provisions of section three of Article III of this Act, he gave answer or produced evidence, and that no such answer

given or evidence produced shall be received against him upon any criminal proceeding. But he may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury or contempt committed in answering, or failing to answer or in producing or failing to produce evidence in accordance with the order, and any such answer given or evidence produced shall be admissible against him upon any criminal proceeding concerning such perjury or contempt.

"Immunity shall not be conferred upon any person except in accordance with the provisions of this subdivision. If after compliance with the provisions of this subdivision, a person is ordered to answer a question or produce evidence of any other kind and complies with such order, and it is thereafter determined that the appropriate attorney general or district attorney or prosecutor having an official interest therein (31) was not notified, such failure or neglect shall not deprive such person of any immunity properly conferred upon him."

N. J. R. S. 32:23-9 provides:

"The Commission shall act only by unanimous vote of both members thereof. Any member may, by written instrument filed in the office of the Commission, designate any officer or employee of the Commission to act in his place as a member whenever he shall be unable to attend a meeting of the Commission. A vacancy in the office of a member shall not impair such designation until the vacancy shall have been filled."

Chief Justice Weintraub, in *Department of Health, State of New Jersey, versus Peter Roselle,* N. J. , a case

decided on March 20, 1961, in the Supreme Court of New Jersey, sets forth the history of contempt actions and describes and defines both civil and criminal contempt. He said, among other things:

"If the order is mandatory and the violator has the ability to perform, the Court will ordinarily jail the offender until he complies. If the order is prohibitory, again the offender (32) may be incarcerated until he undoes the violation if he has the ability to undo it."

The present proceeding is both criminal and civil.

In the above cited case, Judge Weintraub said:

"Yet the object of the proceedings is of great moment for if it is criminal, he is entitled to the safeguards accorded one charged with crime, except the constitutional guarantee of the indictment and trial by jury, and even as to them, we note in passing that a vigorous dissent in *Green versus United States,* 356 U. S. 165, 2 L. Rev. 672, 1958, finds those rights are assured. See Comment, 57 Michigan Law Review, 258, 1958."

N. J. S. 2A:10-1 deals with the power of the courts "to punish for contempt."

The contempt process is severe because of its summary nature and the many different parts a court plays in the proceeding. Naturally, the power should be used cautiously and sparingly.

I find that the designations authorizing Myles J. Ambrose to act in the place of Commissioner Harold Tyler, Jr., to confer immunity upon William Murphy and John Moody, Sr., which (33) designations were introduced into evidence

by the Waterfront Commission at the investigation of October 27, 1961, before mentioned, and the designations authorizing William P. Sirignano to act in the place of Commissioner David C. Thompson to confer immunity upon William Murphy and John Moody, Sr., at the same investigation are valid and comply with the requirements of N. J. R. S. 32:29-9 above.

I further find that the letter to Lawrence A. Whipple, Prosecutor of Hudson County, New Jersey, dated October 10, 1961, and the letter to David D. Furman, Attorney General of New Jersey, along with the letter dated October 23, 1961, to Frank Hogan, District Attorney for New York County, New York, and the letter dated October 24, 1961, to Louis Lefkowitz, Attorney General for New York, which letters were introduced into evidence at the said investigation of October 27, 1961, meet the requirements for notice set out in N. J. R. S. 32:23-86 and are sufficient for the purpose therein expressed.

I find that the explanation of the doctrine and statutory provision of immunity, as expressed by Mr. Piazzi and Mr. Sirignano of the Waterfront (34) Commission, on pages 58, 59, 60, etc., of the transcript of the investigation relating to William Murphy on October 27, 1961, which is incorporated into the investigation of that date concerning John Moody, Sr., by the statements of parties expressed on page 1 of the transcript of that investigation, which is further explained on pages 8 and 9 of said transcript, adequately and properly apprised the defendants of the offered grant of immunity whenever the privilege of self incrimination is invoked and the defendants were directed by the designees of the Commissioners to answer the questions.

The transcripts of the investigations conducted May 19, 1960, October 3, 1961, and October 27, 1961, are replete with explanations as to the subject matter of the investigation. The opinion of the Supreme Court of New Jersey confirming this Court's judgment of contempt against Murphy and Moody sets forth at length the subject matter of the Commission's investigation. The Jurisdictional Statement filed in the Supreme Court of the United States further shows the defendants' familiarity with the (35) subject matter of the Commission's investigation.

I now turn to a consideration of the defendants' contention as advanced in their supplemental and reply brief that the grant of immunity offered by the Waterfront Commission is unconstitutional in that it is not co-extensive with the privilege against self-incrimination invoked. Defendants argue that N. J. R. S. 84 A-1, etc., does not extend the privilege against self-incrimination to a protection against federal incrimination.

It is acknowledged that the grant of immunity offered by the Waterfront Commission did not extend to protection against federal incrimination.

This Court, in a consideration of Chapter 84 A, Rules of Evidence, notes that Rule 2, N. J. R. S. 2A:84 A-16, Scope of Rules, provides in section 4 as follows:

"The enactment of the rules set forth in this act or the adoptions pursuant hereto *shall not operate to repeal any statute by implication*." Underlining by the Court.

Rule 25, N. J. R. S. 2A:84 A-19, Self Incrimination; Exceptions, provides as follows:

(36) "Subject to Rule 37, every natural person has a right to refuse to disclose in an action or to a police officer

or other official any matter that will incriminate him or expose him to a penalty or a forfeiture of his estate, except that under this rule.

"(c) *No person has a privilege to refuse to disclose any matter which the statutes or regulations governing his office, activity, occupation, profession or calling,* or governing the corporation or association of which he is an officer, agent or employee, *require him to record, or report or disclose,* except to the extent that such statute or regulations provide that the matter to be recorded, reported, or disclosed shall be privileged or confidential." Underlining by the Court.

N. J. R. S. 2A:84 A-40, Effect of Rules on Conflicting Laws, provides:

"All previous laws or parts of laws dealing with the admission or rejection of evidence *which shall be expressly identified by footnotes to any rule so adopted* and which shall be in conflict or inconsistent with such rule or rules or included therein, revised or rendered obsolete (37) thereby shall be of no further force or effect after such rule or rules shall have taken effect." Underlining by the Court.

The "Repeals" provision of the statute referred to provides:

"The following acts and parts of acts and all amendments and supplements thereto are hereby repealed: Sections 2A:81-3, 2A:81-5, 2A:81-7, 2A:81-9 and 2A:81-10 of Title 2A of the New Jersey Statutes."

The underlining of all of the foregoing, of course, is supplied by the Court.

As can be seen from the quoted sections, the new Rules of Evidence (N. J. R. S. 2A:84 A-17, etc.) do not operate to repeal any statutes by implication. (2A:84 A-16.)

Previous laws identified by footnotes are to be affected by the new rules. (2A:84 A-40.) The particular section of the New Jersey statutes affected is 2A:81-3, etc.

The Waterfront Commission Act is not affected by these new rules. It is not repealed by implication. It constitutes a statute governing and regulating the waterfront and as such is provided for by 2A:84-19(c), wherein is (38) stated:

"No person has a privilege to refuse to disclose any matter which the statutes or regulations governing his office, activity, occupation * * * require him to disclose."

One of the main arguments advanced by the defendants is that the immunity must be coextensive with the privilege. New Jersey could never grant federal immunity as the Legislature has no power so to do. If this contention is correct, then the State could never grant immunity. It is not essential that for the purpose of conferring immunity federal immunity must also be conferred.

Rule 24 of the Rules of Evidence expressly provides that those rules do not operate to repeal any statutes by implication.

"The enactment of the rules set forth in this Act or the adoption of rules pursuant hereto shall not operate to repeal any statutes by implication." (R. S. 2A:84 A-16(4).)

It is to be further noted that in the report of the Legislative Commission to study the improvement of the law of Evidence, page 15, 1956, it states:

(39) "This paragraph has the effect of continuing all existing statutes. This Commission feels that it is necessary to review the New Jersey Statutes in detail and to specifically treat each such statute dealing with evidence. Otherwise, a wholesale repeal of many statutes, without consideration of all the implications, would result."

Our Supreme Court referred to this report interpreting the rules of evidence. *Nussbaum versus Newark Morning Ledger Company,* 33 N. J. 419, 424 (1960).

Thus it is seen that the privilege against self-incrimination which the defendants are relegated to invoke by the statutory law of New Jersey deal only with a privilege against incrimination dealing with the state. By virtue of the Waterfront Compact this is extended to New York, which has passed the Waterfront Commission Act. (N. Y. Law 1953, 882.)

In the case of the *State of New Jersey versus Francis Murphy,* et al, decided in the last few weeks, in an opinion by Chief Justice Weintraub, he said:

"In short, the States did not create a (40) governmental authority and cut the umbilical cord, if, indeed, constitutionally they could. As the agent of each state, the Commission is subject to all of its laws, whether of statutory or common law origin, excepting insofar as the States agreed expressly or by fair implication to place it beyond them."

I find the grant of immunity offered to the defendants under N. J. R. S. 32:23-86 is co-extensive with the privilege against self-incrimination which they may invoke.

The fact that the immunity granted does not extend to immunity from federal prosecution does not affect the constitutionality of the statute granting immunity.

See *Feldman versus United States*, 322 U. S. 487, 491, citing *Jack versus Kansas*, 199 U. S. 372, 380, wherein it is stated:

"This court (U. S. Supreme Court) has held that immunity against state prosecution is not essential to the validity of federal statutes declaring that a witness shall not be excused from giving evidence on the ground that it will incriminate him, and also that the lack of state power to give witnesses protection against (41) federal prosecution does not defeat a state immunity statute * * *"

See *Knapp versus Schweitzer, Judge of the Court of General Sessions*, et al, 357 U. S. 371.

The respondents and witnesses, Murphy and Moody, have taken the stand in an attempt to pinpoint the federal criminal involvement which they fear.

See *In re Boiardo*, 34 New Jersey 599 (1961).

It is incumbent upon these witnesses to show that there is a reasonable basis for such fear of criminal involvement. This testimony is difficult to believe in the light of the respondent Murphy's statement to his attorney, Mr. Wall. See Exhibit C to the Commission's motion herein, page 30a, where he contended that a labor dispute existed cognizable by the National Labor Relations Board and this negatives the possibility of the work stoppage involved being a part of a conspiracy to commit theft from Interstate Commerce or extort money or otherwise involve a violation of the Federal Criminal Code.

See pages 7, 8, 9, 10, and 11 of the Commission's reply brief.

(42) All briefs, including the one just mentioned, are, of course, in evidence.

It is to be noted that the Waterfront Act was passed primarily to eliminate criminal domination of waterfront labor, that its passage followed extensive study of waterfront conditions by New York, New Jersey, and Congress. Its provisions must be interpreted in the light of its extensive legislative history. Its provisions are to be given effect.

The interpretation these witnesses would have the Court give to its provisions as to the compelling of attendance and testimony of witnesses by subpoena and the granting of immunity from self-incrimination would render it useless and powerless to effectuate the purposes for which it was designed.

For the reasons above stated the Court is constrained to find both Messrs. Murphy and Moody guilty of contempt, civil and criminal, this being both civil and criminal contempt.

The defendant's motions which the Court has before it for consideration, naturally, will be denied. Those motions were motions directed to the discretion of the Court. However, the (43) disposition of the matter on its merits finally disposed of them, but even in the exercise of discretion, none of those motions would be granted by this Court. So all the other motions are respectfully denied.

The Court will defer the imposition of sentence of these defendants for one week from today in order to secure a pre-sentence report from the Probation Department, and I will request that counsel arrange to be here one week from today at 9:30, with the defendants present, of course.

Mr. Krieger: May I, for the record—I understand your Honor is not fixing a trial on either the civil or criminal contempt and makes a finding on these issues without trial?

The Court: Yes.

Mr. Krieger: Are we excused now?

The Court: Yes.

* * *

APPENDIX C

Opinion of Supreme Court of New Jersey in Prior Contempt Proceeding

SUPREME COURT OF NEW JERSEY

A-78 September Term 1960.

IN THE MATTER

OF

THE APPLICATION OF THE WATERFRONT COMMISSION OF NEW YORK HARBOR, to punish WILLIAM MURPHY for failure to obey a Subpoena.

IN THE MATTER

OF

THE APPLICATION OF THE WATERFRONT COMMISSION OF NEW YORK HARBOR, to punish JOHN MOODY, SR. for failure to obey a Subpoena.

Argued April 11, 1961

Decided May 22, 1961

Mr. Robert Wall argued the cause for the Appellant, William Murphy.

Mr. Samuel L. Marciano argued the cause for the Appellant, John Moody, Sr. (Messrs. Florio, Dunn, Marciano & Lypinski, Attorneys; Mr. Samuel L. Marciano, on the Brief.)

Mr. Robert A. Pin argued the cause for the Respondent, Waterfront Commission of New York Harbor. (Mr. William P. Sirignano, of the New York Bar, General Counsel; Mr. Irving Malchman, of the New York Bar, Assistant to General Counsel.)

The opinion of the court was delivered by

PROCTOR, J.

This case turns on whether the Waterfront Commission of New York Harbor has jurisdiction to investigate a work stoppage by longshoremen, when the Commissioners have reason to believe that the stoppage was designed to inhibit effective operation of the port watchman system. The defendants, John Moody, Sr. and William Murphy—officials of the striking union—appeal from a judgment of the Superior Court, Law Division, ordering that they be incarcerated until they are willing to answer certain questions addressed to them by the Commission during the course of its investigation. Each was also fined $50. We certified the appeal before argument in the Appellate Division.

The events leading up to the judgment from which defendants appeal are as follows: One James H. Markley was an investigator for the Commission, assigned principally to cover the piers and terminal of the American Export Lines in Hoboken. On or about May 16, 1960, Markley left the employ of the Waterfront Commission in order to work for American Export as a security officer. To fulfill his security functions, Markley obtained a license from the Commission permitting him to operate as a port

watchman. On May 16, 1960, the day Markley was to commence work for American Export, the longshoremen and checkers employed by American Export in Hoboken did not report for work. With the exception of the morning of May 17, the work stoppage continued until May 25. The striking employees were members of Hoboken Local #2 of the International Longshoremen's Association (ILA). Defendant Moody is an organizer for the ILA in New Jersey; and defendant Murphy is business agent for Local #2.

The Waterfront Commission had information that the work stoppage was "a concerted effort to keep James H. Markley off the piers of the American Export Lines." Accordingly, it instituted an investigation to determine whether any persons registered or licensed by the Commission were violating the Waterfront Commission Act (N.J.S.A. 32:23-1 *et seq.*) by coercing an employer to limit the functions of, or discharge a licensed port watchman. In connection with the investigation, the Commission served subpoenas ordering the defendants to appear and testify. When defendants appeared, they were informed of the above-described purposes of the investigation. They were also informed that the Commission was proceeding under its statutory authority to make investigations and collect and compile information concerning waterfront practices generally, and all matters relating to the accomplishment of the objectives of the Act. The defendants were also told that the Commission was "asking questions to determine the true nature of this work stoppage, to see whether it's a labor dispute or whether

there's violation of both the criminal law or the * * * [Waterfront Commission Act]."

Defendant Moody gave his name and address, testified that he was a union official, and refused to answer any other questions. Defendant Murphy testified that he was business agent of Local #2 and represented members of the Local working at the American Export facilities in Hoboken. He stated that he knew the longshoremen did not work on May 16, 1960, and that it was common knowledge for the ten days preceding May 16 that things were not normal at the American Export piers. Murphy refused to say whether the abnormal conditions were related to the employment of Markley as port watchman, and he refused to answer any other questions. Neither defendant asserted his privilege against self-incrimination; but each stated, *inter alia*, as a reason for his refusal to answer that the Commission did not have jurisdiction to conduct the investigation.[1] The Commission interrogator overruled the defendants' objections to the questions, directed them to answer, and informed them that continued recalcitrance would subject them to "contempt proceedings." Defendants persisted in their refusal; and subsequently the Law Division, pursuant to a motion by the Commission, and after a hearing, rendered the judgment which imposed a fine upon the defendants and directed their incarceration.

Defendants urge reversal of the judgment below on the ground that, even assuming the purpose of the work stoppage was to subvert the port watchman system, the Commission does not have jurisdiction to investigate it. They

[1] Defendants' other stated reasons for their refusals to answer are not related to the grounds for reversal urged on this appeal.

argue (1) that the investigation adversely affects or limits "the right to strike" which is expressly reserved by the Waterfront Commission Act (N.J.S.A. 32:23-68); and (2) that the Commission's power to investigate is in conflict with and therefore pre-empted by the Labor Management Relations Act (LMRA) (29 U.S.C.A. § 141 *et seq.*). Defendants' first argument is encompassed by their pre-emption argument. Article XV, section 1, par. 1 of the Waterfront Commission Act provides:

> "• • • nothing contained in this compact shall be construed to limit in any way the right of employees to strike." N.J.S.A. 32:23-68.

Assuming, *arguendo*, that investigation and the concomitant power to punish recalcitrant witnesses is in itself regulation, the effect of this statutory provision upon the Commission's power to investigate necessarily depends upon what is meant by the "right to strike." Like most rights, that right is not absolute. A strike is not immune under all conditions from any form of governmental regulation. The waterfront Act does not purport to define the dimensions of the right to strike. It therefore merely declares a rule of interpretation which prevents any use of the Act to qualify or impede whatever right exists under New Jersey or Federal law. *Cf International Union v. Wisconsin Empl. Rel. Bd.*, 336 U. S. 245, 259, 93 L. Ed. 651, 665 (1948) (interpreting § 163 of the LMRA, which provides that "Nothing in this subchapter • • • shall be construed so as either to interfere with or impede or diminish in any way the right to strike • • • " 29 U.S.C.A. §163.) We do not know of any New Jersey law which prevents state investigation of a strike intended to inhibit effective

functioning of a security system. If that right exists, it must come from federal law. The applicable federal law is the LMRA and its amendments. By the "right to strike," therefore, defendants must mean that under the federal statute the alleged union activity is either immune from limitation or subject to limitation only by the federal government. So viewed, the argument is that because the work stoppage falls within the purview of the LMRA, the National Labor Relations Board has exclusive primary jurisdiction to deal with it. This is the same as defendants' pre-emption argument and shall be discussed together therewith.

Defendants' pre-emption argument goes as follows: The power to investigate is the power to regulate. A state may regulate union activity only when the activity is clearly not protected by § 7 or prohibited by § 8 of the LMRA. 29 U.S.C.A. §§ 157, 158. Otherwise stated, if union activity is arguably protected or prohibited by the federal legislation, the National Labor Relations Board has exclusive primary jurisdiction to deal with it. See *San. Diego Bldg. Trades Council* v. *Garmon*, 359 U. S. 236, 3 L. Ed. 2d 775 (1959). The Waterfront Commission states that the purpose of its investigation is to determine whether defendants' union struck to cause an employer (American Export) to discriminate against one of its employees (Markley). Defendants contend that such a strike is an unfair labor practice under section 8(b)(2) of the LMRA (29 U.S.C.A. § 158(b)(2)). Accordingly, the Waterfront Commission has no primary jurisdiction to investigate it.

For reasons subsequently to be discussed, it is unnecessary for us to decide whether the strike by defendants'

union arguably fails within the protections or proscriptions of the LMRA. The constitutional doctrine of preemption—the exclusion of state power over a particular matter because it is the subject of comprehensive federal regulation—is designed to implement congressional purpose. See *De Veau* v. *Braisted*, 363 U. S. 144, 153, 4 L. Ed. 2d 1109, 1116 (1960); *Garner* v. *Teamsters, C. & H. Union*, 346 U. S. 485, 488, 98 L. Ed. 228, 238 (1953). If by its regulation of a particular activity Congress has exhibited a purpose which is incompatible with the exercise of state power over the same activity, the state power must give way. *San Diego Bldg. Trades Council* v. *Garmon, supra; Garner* v. *Teamsters, C. & H. Union, supra.* The applicability of the doctrine to the present case therefore depends upon an answer to the question: Would Congress regard a Commission investigation of a strike designed to limit the effectiveness of the port-watchman system as incompatible or in conflict with federal regulation of labor relations?

The answer to the above question turns on the nature of the Waterfront Commission Act. Our Act is a counterpart of one contemporaneously adopted by New York. L. 1953, cc. 202, 203, N.J.S.A. 32:23-1 *et seq.*; N. Y. Laws 1953, cc. 882, 883, *McKinney's Unconsolidated Laws*, §§ 6700aa *et seq.* It has three parts. Part *I N.J.S.A.* 32:23-1 to 73) is a compact of sixteen articles entered into by the two states with the consent of Congress (67 Stat. 541, Act of Aug. 12, 1953, c. 407) as required by Article *I*, section 10 of the Federal Constitution. This part establishes the Waterfront Commission as a bi-state agency, sets forth the purposes of the legislation, and gives to the Commission

certain powers essential to fulfillment of those purposes. Part *II* N.J.S.A. 32:23-74 to 77.3) primarily concerns the financial administration of the Commission and its programs. And Part *III* (N.J.S.A. 32:23-78 to 108) contains provisions supplementing and implementing the compact of Part *I*.

A recent United States Supreme Court case relies on congressional approval of the bi-state Compact to show that the congressional purpose manifested in federal labor legislation is not incompatible with the exercise of a state power asserted under the Waterfront Act. *De Veau* v. *Braisted*, 368 U. S. 144, 4 L. Ed. 2d 1109 (1960), At issue in *De Veau* was the validity of a provision in Part III of the New York Act (New Jersey's Act has a similar provision) which prohibits a waterfront union from collecting dues if any officer of the union has been convicted of a felony and has not been pardoned or given a certificate of good conduct by the parole Board. *McKinney's Unconsolidated Laws* § 6700-ww; (N.J.S.A. 32:23-80). The plaintiff, a local union official who had been convicted of grand larceny, was suspended from office because the defendant district attorney threatened to prosecute any person collecting dues for the local so long as the plaintiff remained an officer. The plaintiff sought to have the statutory provision declared unconstitutional and its operation enjoined. His primary argument was that the disputed section of the Waterfront Act was in conflict with and therefore pre-empted by the LMRA, specifically sections 1 and 7 thereof. 29 U.S.C.A. §§ 151, 157. Section 1 of the LMRA declares a congressional purpose to protect "the exercise by workers of full freedom of association,

self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." 29 U.S.C.A. § 151. Section 7 grants employees "the right * * * to bargain collectively through representatives of their own choosing." 29 U.S.C.A. § 157. The plaintiff argued that pre-emption resulted from the fact that the employees' right to select representatives of their own choosing guaranteed by the LMRA was interfered with or limited by the Waterfront Act provision disabling them from collecting dues if they select a convicted felon as a representative.

The court rejected the pre-emption argument on the ground that "in light of the purpose, scope and background of * * * [the Waterfront Commission Act] and Congress' relation to it, * * * an inference of incompatibility has no foundation." 363 U. S. at 153, 4 L. Ed. 2d at 1116. It noted that the Waterfront Act was passed primarily to eliminate criminal domination of waterfront labor; that its passage followed extensive study of waterfront conditions by New York, New Jersey and Congress; and that Congress concurred in the states' conclusion that statutory measures to control waterfront labor practices were essential to eliminate the then prevailing crime-infested conditions. The court reasoned that by approving the bi-state Compact and thus endorsing its goals, Congress manifested an intent not to pre-empt regulation of union officials by the Waterfront Commission.[2]

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[2] The plaintiff in *De Veau* also argued that pre-emption derived from a provision of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. § 401 *et seq.*, which imposed less restrictive limitations on union officers than the Waterfront Act. The court rejected that argument on the ground that when Congress meant pre-emption to flow from the 1959 Act, it expressly so provided.

The principle of *De Veau*—that congressional approval of the bi-state Compact indicates the inapplicability of the pre-emption doctrine to a state power derived from the Waterfront Act—applies with even more force to the case before us. For in *De Veau* the disputed section of the Waterfront Act was not part of the Compact expressly consented to by Congress.[3] An examination of the history and structure of the Waterfront Act shows that the power here asserted by the state is not only essential to fulfillment of the statutory objectives but is accorded by the Compact which Congress approved.

As previously noted, submission of the Compact to Congress was preceded by extensive studies, undertaken by the states and Congress, of conditions on the New York-New Jersey waterfront. For a discussion of these studies, see *Hazelton* v. *Murray*, 21 N. J. 115 (1956) and state and congressional reports cited therein.

The legislative reports all indicate that the Act was passed to eliminate racketeering and other evils on the New York-New Jersey waterfront. One evil of specific concern was the domination of the Port Watchmen's union by the ILA. Criminal elements in control of the ILA were thus able to neutralize the effectiveness of the security system, and commit crimes without fear of disclosure. "Through their power as union officials, they [criminal leaders of the ILA] place their confederates in key posi-

[3] As previously noted, the disputed section was contained in Part *III*. Parts *II* and *III* were not part of the Compact. The Supreme Court reasoned, however, that since Congress was aware of the provisions in Part *III* when it approved Part *I*, and since Part *III* was essential to implementation of Part *I*, congressional approval extended to the disputed section.

tions on the docks * * * and carry on such activities as pilferage, loansharking and gambling." *Fourth Report, N. Y. State Crime Commission, N. Y. State Leg. Doc. No. 70,* pp. 23-24 (1953). The extent and effect of former ILA control over watchmen is illustrated by the following excerpts from pages 57, 59, and 63 of the New York report adopted by the New Jersey Law Enforcement Council (*Report of the New Jersey Law Enforcement Council,* p. 3, June 19, 1953):

> "Prior to the Taft-Hartley Act (1947) the Port Watchmen's Union, Local 1456, which represented the New York port watchmen, was an ILA local dominated and controlled by Joseph P. Ryan, John J. (Ike) Gannon, Charles P. Spencer, and their associates. Since the port watchmen were supposed to stop thievery, loansharking, gambling and extortion, and to preserve the peace, they could hardly expect—and did not receive—any support from the officials of the ILA or of its locals.
>
> * * *
>
> "The close connection of the watchmen's union with the ILA has resulted in watchmen being reprimanded by their union leaders for reporting a longshoreman for stealing. This situation was developed in the testimony of C. Gulizia, a port watchman (3168-3169);
>
> Q. And did you have occasion during that time to pick up a longshoreman for stealing cargo on that pier? A. Right, sir.
>
> * * *
>
> Q. Turned the man in? To whom? A. To the superintendent, of course. The man, I hear, got four days

suspension. The man went to the union and complained about it.

Q. And he came back to work? A. Well, he didn't come back. Maybe he went to another pier.

Q. But he got a four-day suspension? A. As far as I was told.

Q. He wasn't prosecuted criminally, so far as you know? A. Never.

Q. He wasn't sentenced to jail for larceny, anything of that kind? A. Never. None of them were sent to jail.

• • •

Q. And what did Gannon say about it? A. Well, he says, 'That isn't the right way to do things,' and he says, Gannon says, 'If you were to get four days' suspension, how would you like it?'

Q. You mean the president of the Watchmen's Union? A. That's right.

Q. Told you it wasn't right to turn in a man you'd seen actually stealing cargo on the pier? A. That's right. That's right.

The port watchman, next to the rank-an-file longshoreman, is the most tragic figure on the piers.

• • •

"When some steamship companies have attempted to increase the effectiveness of their security service they have been met with objections on the part of ILA officials and forced to give up the project. An example was given by F. M. Rohrer of the Grace Line. Rohrer explained what happened when he tried to hire Vincent Tierney to head the Grace Line port police (371):

Q. Did you then tell Mr. Tierney that you had to clear the hiring of Mr. Tierney to replace Mr. English with Gene Sampson, the delegate of 791, and Jay O'Connor, the delegate of 791, and others? A. I don't know as it was mentioned by name, but I probably did tell him that it had to be cleared through the union.

Q. That the hiring of the head watchman had to be cleared— A. (interposing) With the union delegates.

Q. ILA union delegate? A. That's right.

Q. Not the watchmen's delegates? A. No.

"Tierney was then employed to make a security study on the piers operated by the Grace Line, but even this met with violent union opposition. In fact, Tierney, an ex-policeman, testified that he had been threatened with death (3889)."

To combat the above-enumerated and other evils, the Compact (the part of the Act approved by Congress) grants to the Waterfront Commission authority to license or register waterfront workers and to regulate hiring practices. Of particular significance to the present case is the fact that the Compact requires port watchmen to be licensed by the Commission (N.J.S.A. 32:23-39) and establishes as a condition for receiving and holding a license that a watchman not be a member of a union which represents longshoremen. N.J.S.A. 32-23-41(d) and 44(a). To make effective the provisions of the Act, the Compact grants the Commission the powers, among others, (1) "*to make investigations*, collect and compile information *concerning* waterfront practices generally within the port of New York district and upon *all matters relating to the ac-*

complishment of the objectives of this compact." N.J.S.A. 32:23-10(11) [Emphasis added]; (2) "to administer oaths *and issue subpoenas throughout both States to compel the attendance of witnesses and the giving of testimony* and the production of other evidence." N.J.S.A. 32:23-10(8) [Emphasis added]; and (3) "to make annual and other reports to the Governors and Legislatures of both States containing recommendations for the improvement of the conditions of watedfront labor * * * for the alleviation of the evils described * * * and for the effectuation of the purposes of this compact." N.J.S.A. 32:23-10(13). N.J.S.A. 32:23-62, also contained in the Compact approved by Congress, provides that failure of any witness when duly subpoenaed to attend or give testimony shall be punishable by the Superior Court, Law Division, in New Jersey, and the Supreme Court in New York in the same manner as such failure is punishable by those courts in a case pending therein. See *In re Application of Waterfront Com.*, 32 N. J. 323, 332 (1960).

It is clear from a reading of the legislative reports which preceded passage of the Waterfront Act and a reading of the Compact itself that the creation and maintenance of an independent port watchman system was regarded by both the States and Congress as essential to the creation and preservation of a crime-free waterfront. It is equally clear that power to investigate any activity which reasonably appears designed to inhibit the effectiveness of the port security system is essential to the maintenance of the watchman's independence and thus to the

fulfillment of the ultimate statutory goal. We can think of no sensible reason why Congress would expressly approve the States' effort to rid the waterfront of crime by creating, among other things, an independent watchman system, and yet pre-empt and thus bar application of the expressly granted power to investigate activities which appear detrimental to accomplishment of that goal. *Cf. De Veau* v. *Braisted, supra,* 363 U. S. at 153, 4 L. Ed. 2d 1109 at 1116.

Applying the principle of *De Veau* to the case before us; we find that by its express approval of the bi-state Compact Congress indicated that exercise of the Commission's investigatory power over a strike which appears designed adversely to affect the port security system does not conflict with the policies and goals of federal labor legislation and that therefore the States' power is not pre-empted by the LMRA.[4] We note that our conclusion is consistent with all other cases we know of in which some provision of the Waterfront Act was alleged to have been pre-empted by federal legislation. In each case the Act survived the pre-emption attack. *Staten Island Loaders* v. *Waterfront Commission,* 117 F. Supp. 308 (S. D. N. Y. 1953) *aff'd* 347 U. S. 439, 98 L. Ed. 826 (1954); *Linehan* v. *Waterfront Commission of New York Harbor,* 116 F. Supp. 683 (S. D. N. Y. 1953), *aff'd* 347 U. S. 439, 98 L. Ed. 826 (1954); *Bell* v. *Waterfront Commission of New York Harbor,* 279 F.

[4] The defendants do not urge a conflict between the Commission's power to investigate this strike and any provision of the Labor-Management Reporting and Disclosure Act of 1959. 29 U.S.C.A. § 401 *et seq.*

2d 853 (2d Cir. 1960); *Bradley* v. *Waterfront Com'n of New York Harbor*, 130 F. Supp. 303 (S. D. N. Y. 1955); *O'Rourke* v. *Waterfront Commission*, 118 F. Supp. 236 (S. D. N. Y. 1954); *Applegate* v. *Waterfront Com'n of New York Harbor*, 184 F. Supp. 33 (S. D. N. Y. 1960); *Habelton* v. *Murray, supra*.

We hold that the Commission may investigate a waterfront work stoppage when the Commissioners have reason to believe that the stoppage is designed to inhibit effective operation of the Act. The Commission is entitled to know all of the facts surrounding such a stoppage so that it may intelligently determine whether persons registered or licensed by the Commission have violated any provision of the Act and so that it may fulfill its statutory duty of recommending to the state governments measures for the improvement of the conditions on the New York-New Jersey waterfront.

Accordingly, the judgment of the Supreme Court, Law Division, is affirmed.

APPENDIX D

Opinion of Superior Court of New Jersey, Law Division, Hudson County, in Prior Contempt Proceedings

Jersey City, N. J.
June 17, 1960.

Before:

HON. JOSEPH L. SMITH, *J. S. C.*

Appearances:

For the Waterfront Commission of New York Harbor:
ROBERT A. PIN, ESQ.

For William Murphy:
ROBERT H. WALL, ESQ.

For John Moody, Sr.:
LAWRENCE E. FLORIO, ESQ.

The Court: Today is the return day of an Order to Show Cause requiring William Murphy and John Moody, Sr. to show cause before this Court why they should not be punished for contempt of court, pursuant to R. R. 4:46-5 (c).

The American Export Lines, Inc., which leases and operates waterfront piers and a terminal in Hoboken, New Jersey, employed one James H. Markley to be its Chief Security Officer in the Port of New York, including Hoboken. The employment of the said James H. Markley commenced May 16, 1960. Prior to the commencement of his employment with American Export Lines, he was an investigator for the Waterfront Commission and his principal assignment was to cover said piers and terminal of American Export Lines, Inc., in Hoboken.

Appendix D—Opinion of Superior Court of New Jersey

On Monday, May 16, 1960, when the employment of James H. Markley for American Exports Lines commenced, a work stoppage began of the longshoremen and checkers employed by the American Export Lines in Hoboken, New Jersey. This work stoppage continued except for the morning of Tuesday, May 17, 1960, until Monday, May 23, 1960, when it ceased at 8 A.M., and the Court has been informed the men have been back to work continuously up to the present time.

Under the Waterfront Commission Act, the longshoremen and checkers who were participating in this work stoppage are required to be and are registered by the said Commission. Also, under the said Waterfront Commission Act, James H. Markley, as Chief Security Officer of American Export Lines, must be and is licensed by the Waterfront Commission as a port watchman.

The Waterfront Commission alleges it has information that this work stoppage was a concerted effort to keep James H. Markley off the piers of the American Export Lines in Hoboken. Accordingly, in order to determine whether this work stoppage constituted an illegal coercion of an employer (American Export Lines) to compel such employer to limit the functions of, or to discharge, a licensed port watchman (James H. Markley) and to further determine whether any person registered or licensed by the Waterfront Commission were participating in such illegal coercion, the Commission instituted the instant investigation. The foregoing is the purpose of the said investigation, as stated by the Commission.

In connection with such investigation, subpoenas of the

Waterfront Commission, returnable forthwith, were duly served on May 18, 1960, on William Murphy, the business agent of Local number 2 of the ILA, representing longshoremen in Hoboken, New Jersey, and upon John Moody, Sr., organizer for the ILA in the State of New Jersey. Both Murphy and Moody appeared at the offices of the Waterfront Commission in response to these subpoenas on the afternoon of May 19, 1960 (the duly adjourned return date of said subpoenas). Both Murphy and Moody, after answering certain various preliminary questions, refused to answer the following questions asked them pursuant to the aforesaid subpoenas.

Mr. John Moody, Sr., refused to answer the following questions:

"Q. Are you an official of any ILA local?"

"Q. Mr. Moody, will you tell us what local you are an official of?"

"Q. Mr. Moody, what position do you hold with the local of the ILA that you are affiliated with?"

"Q. All right, Mr. Moody, would you tell us when you first received news of any labor trouble on Piers 'A,' 'B' and 'C' in Hoboken?"

"Q. Mr. Moody, within the last week have you attended any conferences with the officials of the American Export Line with respect to the work stoppage at Piers 'A,' 'B' and 'C' in Hoboken?"

"Q. Have you had any conversation with Captain Andrews, Leland Andrews, of American Export Line with respect to the stoppage this week at Piers 'A,' 'B' and 'C' in Hoboken, New Jersey? When I say this week, I mean from May 16th to the present.

"Q. Mr. Moody, have you had any discussions or conversations with Captain Blackledge of the American Export Lines concerning the refusal to work at Piers 'A,' 'B' and 'C' of longshoremen in that particular—on those particular piers this week?"

"Q. Have you had any conversations with Michael McNamara, Senior Hiring Agent of the American Export Lines, concerning the work stoppages at Piers A, B and C that have occurred since May 1, 1960, to the present?"

"Q. Mr. Moody, have you at any time, either prior to the work stoppage which commenced on May 16th, 1960 or before that time or after that time, did you at any time issue orders for a work stoppage at Piers A, B, and C?"

"Q. Did you, before May 16th ever give any orders for the commencement of a work stoppage at Piers A, B, and C?"

"Q. Have you since May 16, in other words, May 16, May 17, May 18, and May 19, have you on these particular days issued any instructions concerning work stoppages, any instructions, now both either commencing or ceasing the stoppages at Piers A, B, and C, Hoboken?"

"Q. Have you had any conversations with anyone since May 16, 1960 to the present concerning the work stoppages at Piers A, B, and C?"

"Q. What is your function with the local in Hoboken?"

"Q. What is your position with the union?"

"Q. Mr. Moody, were you present at Piers A, B and C, Hoboken, on Monday of this week?"

"Q. Were you at the piers on Tuesday?"

Mr. William Murphy refused to answer the following questions:

"Q. Now, for the record, Mr. Murphy, did you have anything to do with causing the strike that is presently pending at the American Export Line?"

"Q. Did you, in any way, participate in this work stoppage to compel the American Export Line to discharge, or to limit the duties of our employee by the name of James Markley?"

Mr. Murphy refused to give any further testimony.

Mr. Moody and Mr. Murphy based their refusals to testify on the following grounds:

1. The work stoppage is a matter which the Commission has no statutory authority to investigate.

2. The work stoppage is a matter over which the National Labor Relations Board has exclusive jurisdiction.

3. The Commission has no right to investigate the work stoppage since civil litigation may ensue as a result thereof. (The American Export Lines has threatened to sue the ILA.)

4. The Commission's investigation seeks to inquire into privileged communications between union and management and/or between union representatives.

By way of answering statement and affidavit, Mr. William Murphy states:

1. He is a Business Agent for Local 2 of the International Longshoremen's Association.

2. He has never been convicted of a crime and in spite of his being acquitted of a charge, the Waterfront Commission of the Port of New York arbitrarily denied him the right to work on the waterfront.

"Q. Mr. Moody, have you had any discussions or conversations with Captain Blackledge of the American Export Lines concerning the refusal to work at Piers 'A,' 'B' and 'C' of longshoremen in that particular—on those particular piers this week?"

"Q. Have you had any conversations with Michael McNamara, Senior Hiring Agent of the American Export Lines, concerning the work stoppages at Piers A, B and C that have occurred since May 1, 1960, to the present?"

"Q. Mr. Moody, have you at any time, either prior to the work stoppage which commenced on May 16th, 1960 or before that time or after that time, did you at any time issue orders for a work stoppage at Piers A, B, and C?"

"Q. Did you, before May 16th ever give any orders for the commencement of a work stoppage at Piers A, B, and C?"

"Q. Have you since May 16, in other words, May 16, May 17, May 18, and May 19, have you on these particular days issued any instructions concerning work stoppages, any instructions, now both either commencing or ceasing the stoppages at Piers A, B, and C, Hoboken?"

"Q. Have you had any conversations with anyone since May 16, 1960 to the present concerning the work stoppages at Piers A, B, and C?"

"Q. What is your function with the local in Hoboken?"

"Q. What is your position with the union?"

"Q. Mr. Moody, were you present at Piers A, B and C, Hoboken, on Monday of this week?"

"Q. Were you at the piers on Tuesday?"

Mr. William Murphy refused to answer the following questions:

"Q. Now, for the record, Mr. Murphy, did you have anything to do with causing the strike that is presently pending at the American Export Line?"

"Q. Did you, in any way, participate in this work stoppage to compel the American Export Line to discharge, or to limit the duties of our employee by the name of James Markley?"

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4. The Commission's investigation seeks to inquire into privileged communications between union and management and/or between union representatives.

By way of answering statement and affidavit, Mr. William Murphy states:

1. He is a Business Agent for Local 2 of the International Longshoremen's Association.

2. He has never been convicted of a crime and in spite of his being acquitted of a charge, the Waterfront Commission of the Port of New York arbitrarily denied him the right to work on the waterfront.

3. There exists a contract between the American Export Lines and Local 2 of the International Longshoremen's Association and said contract covers any and all labor problems, together with a method of resolving same. The National Labor Relations Board has full control and jurisdiction of any labor disputes.

4. The Waterfront Commission of the Port of New York does not have any jurisdiction of any labor problems under Statute 32:23-1, et seq. It appears in the Notice of Motion and more particularly paragraph 2 thereof, that it has depended for its jurisdiction in this matter on a report of the New York State Crime Commission, which report was filed prior to the enactment of the Waterfront Commission Statute in New Jersey.

5. There does not exist any accusation or charges setting forth a reason for intermeddling in a purely labor situation. In fact, William P. Sirignano, General Counsel and Hearing Officer in the instant matter, so stated at the hearing.

6. He qualified his refusal to answer stating that he was threatened with a suit, that a labor dispute was in progress, and he felt that any requirements to answer would deprive him and the members of Local 2 of their rights under the 14th Amendment of the United States Constitution and, further, that the Waterfront Commission of the Port of New York has no jurisdiction in the labor problem.

7. He is not registered or licensed by the Waterfront Commission of the Port of New York, and, therefore, in accordance with Paragraph 9 of the Notice of Motion, in which the Commission states that it "desired to determine

whether any persons registered and licensed by the Waterfront Commission are participating in such illegal coercion," he does not come under the control of the Waterfront Commission are participating in such illegal coerreference to any jurisdiction of the Port of New York concerning labor and labor representatives as such is to be found in N. J. S. A. 32:23-10, paragraph 12, "To advise and consult with representatives of labor and industry, etc."

8. It is apparent that a labor dispute exists under full control of the United States Government, National Labor Relations Board, and to allow the Waterfront Commission of the Port of New York to intermeddle would lead to the impairment of the existing contractual relationships between labor and management.

The Waterfront Commission contends the subject matter of the present investigation is within its statutory authority. The purpose of the present investigation is to determine whether the work stoppage involved herein constituted an illegal coercion of an employer (American Export Lines) to compel such employer to limit the functions of, or to discharge, a licensed port watchman (James A. Markley) and, further, to determine whether any persons registered or licensed by the Waterfront Commission are participating in such illegal coercion.

The Commission relies on N. J. S. A. 32:23-10, General Powers, which provides in part:

In addition to the powers and duties elsewhere prescribed in this compact, the Commission shall have the power:

"(11) To make investigations, collect and compile information concerning waterfront practices generally within the port of New York district and upon all matters relating to the accomplishment of the objectives of this compact."

The Commission cites *Matter of the Application of the Waterfront Commission of New York Harbor to Punish Anthony Marchito for Failure to Obey a Subpoena*, decided May 9, 1960, wherein the Supreme Court, Justice Haydn Proctor, speaking for the Court, held:

"The trial court had before it uncontradicted affidavits showing that the purpose of the Commission's investigation was to ascertain the facts concerning the issuance of local charters by the ILA to criminal elements. Clearly, the fact that known hoodlums and criminals may be exercising influence in the ILA is a matter within the Commission's statutory power 'to make investigations, collect and compile information concerning waterfront practices generally.' "

The Commission further contends the instant investigation is not in any respect proscribed by the National Labor Relations Act for the reasons:

1. The Commission is simply investigating information that it has that the work stoppage constituted a concerted effort to keep James H. Markley off the piers of the American Export Lines in Hoboken in order that it, the Commission, may intelligently act in the premises. In this regard, the Commission cites *ICC* v. *Goodrich Transit Co.*, 224 U. S. 194, 211 (1912), for the proposition that "the requiring of information concerning a business is not regulation of that business."

2. The instant work stoppage was in violation of a no-strike clause contained in a collective bargaining agreement in force between the New York Shipping Association, Inc., and the ILA. The clause provides as follows:

"Part III. Prohibition of Lockouts, Strikes or Work Stoppages.

"During the life of this agreement, the party of the first part agrees there shall be no lockouts or work stoppages by the employers but this shall not be construed to mean a lay-off of employees due to business conditions, and the party of the second part agrees there shall be no strikes or work stoppages by the employees. The right of employees not to cross a bona fide picket line is recognized by the employers."

Thus, the instant work stoppage in violation of the above no-strike clause is outside the protection or purview of the National Labor Relations Act. Citing, *NLRB* v. *Dorsey Trailers*, 179 Federal, 2d 589 (5th Cir. 1950); *NLRB* v. *Columbian Enameling & Stamping Co.*, 96 Federal, 2d 984 (7th Cir. 1938), affirmed on another ground 306 U. S. 292.

And since the instant work stoppage is outside the purview of the National Labor Relations Act, the Commission contends it is cognizable by the state courts or agencies. Citing *Philadelphia Marine Trade Association* v. *ILA*, 382 Pa. 326, 115 Atlantic 2nd 733 (1955); *Parodi Cigar Co. of New York* v. *Gaeta*, 156 N. Y. S. 2nd 282 (Supreme Court Queens 1956).

3. Section 9(b) (3) of the National Labor Relations Act (29 U. S. C. 159 (b) (c)) explicitly provides that the National Labor Relations Board shall not certify as a col-

lective bargaining unit a group which includes guards or watchmen together with other employees. Since the instant work stoppage of longshoremen and checkers was about the employment of James Markley, a guard or watchman on the pier, it appears for this reason to be outside the purview of the National Labor Relations Act.

In support of this contention the Commission cites *S-M News Co.* v. *Simons*, 279 App. Div. 364, 110 N. Y. S. 2nd 175, 179, where an injunction was issued against a work stoppage to compel the giving of business to a relative of the union president.

The Commission further contends that the threat of civil litigation is no ground for a refusal to answer questions pertaining to the work stoppage here involved. See *Bowles* v. *Bay of New York Co. & Supply Corp.*, 152 Federal 2nd 330 (2nd Circuit 1945) and 8 *Wigmore*, Section 2223 (11) (1940 Ed.).

It is the further contention of the Commission that no privilege exists concerning communication between union and management and/or between union representatives.

The National Labor Relations Act defines the following terms that the Court has considered:

"Strike"—29 U. S. C. A. 142.

"Labor dispute"—29 U. S. C. A. 152

"Involve or grow out of labor dispute.

"A case shall be held to involve or grow out of a labor dispute when the cases involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or affiliated organization of employers or employees; whether

such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or association of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a labor dispute (as defined in this section) of 'persons participating or interested therein' (as defined in this section)."

The foregoing is to be found in 29 U. S. C. A. 113.

I have also considered:

"Unfair labor practice.

"It shall be an unfair labor practice for a labor organization or its agents

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 157 of this title.

"(4) (D) forcing or requiring any employer to sign particular work to employees in a particular labor organization or in a particular trade, craft or class rather than to employees in another labor organization or in another trade, craft or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work."

Section 157 of that Act provides:

"Right of employees as to organization, collective bargaining, etc.

"Employees shall have the right to self organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a) of this title."

The National Labor Relations Board is empowered to prevent any person from engaging in an unfair labor practice affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise. 28 U. S. C. A. 160.

Article XV of the Waterfront Commission Act, N. J. S. A. 32:23-68, provides:

"Certain rights of employees not limited by compact.

"This compact is not designed and shall not be construed to limit in any way rights granted or derived from any other statute or any rule of law for employees to organize in labor organizations, to bargain collectively and to act in any other way individually, collectively, and through labor organizations or other representatives of their own choosing. Without limiting the generality of the foregoing, nothing contained in this compact shall be construed to limit in any way the right of employees to strike."

Jurisdiction in matters involving labor disputes and unfair labor practices has been expressly granted to the National Labor Relations Board as embodied in the Na-

tional Labor Relations Act. On the other hand, jurisdiction granted to the Waterfront Commission by the Waterfront Commission Act is limited. It is subject to rights of employees which have been granted or derived from any other statute or rule of law. The power of the Waterfront Commission is expressly subject to the right of employees to strike.

The determination of whether the National Labor Relations Board has jurisdiction in a particular case can only be made by that Board.

Mr. Justice Frankfurter bears out this fact when speaking for the United States Supreme Court in the case of *San Diego Unions* v. *Garman*, 359 U. S. 236, at page 244, referring to Sections 7 and 8 of the National Labor Relations Act:

"At times it has not been clear whether the particular activity regulated by the states was governed by section 7 or 8 or was, perhaps, outside both these sections. But courts are not primary tribunals to adjudicate such issues. It is essential to the administration of the Act that these determinations be left in the first instance to the National Labor Relations Board."

Further, Mr. Justice Frankfurter says at page 245:

"When the activity is arguably subject to section 7 or 8 of the Act, the state as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted."

Sections 7 and 8 of the National Labor Relations Act discussed by Mr. Justice Frankfurter govern both concerted activities and unfair labor practices. They regulate the

vital economic instruments of the strike and picket line and unsettled claims between employers and labor unions.

The authority for the Waterfront Commission to make investigations such as here in question is found in N.J.S.A. 32:23-10, General Powers, which provides in part:

"In addition to the powers and duties elsewhere prescribed in this compact, the Commission shall have the power:

"11) To make investigations, collect and compile information concerning waterfront practices generally within the port of New York district and upon all matters relating to the accomplishment of the objectives of this compact.

"13) To make annual and other reports to the Governors and Legislature of both States containing recommendations for the improvement of the conditions of waterfront labor within the port of New York district, for the alleviation of the evils described in Article I and for the effectuation of the purposes of this compact."

As was above noted, the objectives and purposes of this compact may not be extended to limit rights granted to employees by any other statute or rule of law. N. J. S. A. 32:23-68.

The right to have labor disputes settled by the National Labor Relations Board and the right to have the National Labor Relations Board determine if it has jurisdiction in a particular controversy are rights which this compact may not limit, and it is not being contended here that they have any such rights.

In the present case the Waterfront Commission states

it has information that this work stoppage was a concerted effort to keep James H. Markley off the piers of the American Export Lines in Hoboken, New Jersey, and, accordingly, as I have already stated, in order to determine whether this work stoppage constituted an illegal coercion of an employer to compel such employer to limit the functions of, or to discharge, a licensed port watchman, the Commission instituted the instant investigation.

See *NLRB* v. *Dorsey Trailers, supra,* and *NLRB* v. *Columbia Enameling and Stamping Co., supra.*

In the *Marchitto* case, *supra,* Mr. Justice Proctor said:

"The Commission's investigative function within its statutory jurisdiction is very like that of a grand jury. It must not act arbitrarily, or in excess of its jurisdiction, but the scope of its investigations is not to be limited by conjectural forecasts of their probable result."

Further in the same opinion, he said:

"No doubt the interests of men to be free from officious intermeddling call for protection. But we feel that these interests may be adequately protected without a full judicial trial at the threshhold of an investigation into the question whether it will uncover matter which should in the public interest be uncovered. The obligation of a subpoena cannot rest on a trial of the value of the testimony sought. It is enough that the proposed investigation be for a lawfully authorized purpose, and that the proposed witness be claimed to have information that might shed some helpful light."

This investigation is both lawful and authorized.

The Waterfront Commission, of course, further contends the National Labor Relations Board does not have

jurisdiction since 29 U. S. C. A., Section 159 (b) (3) explicitly provides the National Labor Relations Board shall not certify as a collective bargaining unit a group which includes guards or watchmen together with other employees.

However, even though the National Labor Relations Board refused to certify the Independent Watchmen's Association, the Board did certify the locals representing the longshoremen and checkers who participated in this work stoppage.

See *S-M News Co.* v. *Simons, supra.*

Therefore, it seems to me, for the reasons above stated, that the Rule to Show Cause has merit and that the Court is constrained to find both Messrs. Murphy and Moody guilty of contempt.

The Court, naturally, if they so desire, will afford an opportunity for these gentlemen to purge themselves of such contempt within a reasonable time.

Mr. Pin: May I interrupt the Court briefly? It is my understanding that the rules provide that on an adjudication of contempt, the Court shall further find whether the contempt is civil or criminal or both, and for the record, may I have your finding?

The Court: Civil.

APPENDIX E—Judgments Below

Mandate on Modification

SUPREME COURT OF NEW JERSEY

APPEAL DOCKET No. 3930

Civil Action On Appeal

In the Matter of the Application of the Waterfront Commission of New York Harbor, to punish John Moody, Sr. for failure to obey a Subpoena.

In the Matter of the Application of the Waterfront Commission of New York Harbor, to punish William Murphy for failure to obey a Subpoena.

This cause having been duly argued before this Court by Mr. Harold Krieger, counsel for the appellants and Mr. Robert A. Pin and Mr. Irving Malchman, counsel for the respondent, and the Court having considered the same,

It is hereupon ordered and adjudged that the judgments of the said Superior Court—Law Division be and the same hereby are modified; and it is further ordered that this mandate shall issue ten days hereafter, unless an application for rehearing shall have been granted or is pending, or unless otherwise ordered by this Court, and that the record be remitted to the Superior Court—Law Division to be

there proceeded with in accordance with the rules and practice relating to that court, consistent with the opinion of this Court.

WITNESS the Honorable JOSEPH WEINTRAUB, Chief Justice, at Trenton on the fourth day of March, 1963.

FILED
Mar 4 1963

John H Gildea
Clerk

JOHN H. GILDEA
Clerk of the Supreme Court

A TRUE COPY

JOHN H. GILDEA
Clerk

Appendix E—Judgments Below

Judgment (Re: John Moody, Sr.)

(Filed—December 4, 1961)

This matter being opened by ROBERT A. PIN, Esq. Attorney for the Waterfront Commission of New York Harbor, the moving party, in the presence of HAROLD KREIGER, Esq. and ROBERT WALL, Esq., Attorneys for JOHN MOODY, SR., upon the return of an order of this court dated November 1, 1961, directing said John Moody, Sr. to show cause why he should not be adjudged guilty of criminal and civil contempt for failure to obey a subpoena issued by the Waterfront Commission of New York Harbor, an administrative agency, and in accordance with the opinion of this court dated November 22, 1961, defendant John Moody Sr. was adjudged guilty of criminal and civil contempt in his failure to answer certain questions as required by the subpoena, on the 27th day of October, 1961:

1. Q. "Mr. Moody, are you an official of the International Longshoreman's Association Independent or the International Longshoremen's Association which is affiliated with the AFL-CIO?"

2. Q. "Mr. Moody, I direct your attention to a work stoppage that occurred on Monday, May 16, 1960 Piers A, B, and C, Hoboken, the American Export Lines Terminal. Did you have any prior knowledge that the work stoppage was to take place on Monday, May 16, 1960, at that terminal?"

3. Q. "Mr. Moody, would you tell the Commission on the source of the knowledge that you have concerning the work stoppage, Piers A, B, and C, Hoboken, May 16, 1960?"

4. Q. "Mr. Moody, did you, at any time, prior to May 16, 1960 give orders to any longshoreman, shop stewards or others to commence a work stoppage on Monday, May 16, 1960, because of the presence of one James Markley on the piers as a security officer?"

5. Q. "Mr. Moody, did you have any conversations with any other union official of the International Longshoreman's Association prior to May 16, 1960 about calling a strike concerning James Markley's presence on the Hoboken Terminal as a security officer?"

6. Q. "Did you have a conversation about calling a strike during the week of May 16, 1960, with one Mr. Gleason of the I. L. A.?"

7. Q. "On the 17th of May, 1960 were you present on the terminal in Hoboken, which is called the American Export Lines Terminal? Were you present?"

8. Q. "Did you, on that date, May 17, 1960, tell the shop stewards, Frank Rump, Carmine Bruno, Eric Lempke to call the longshoremen out on strike because of the presence of Mr. Markley on the piers as a security officer?"

9. Q. "Did you attend the meeting on May 17, 1960 in the offices of the American Export Lines at the Hoboken Terminal? Did you attend such a meeting?"

10. Q. "Did you at that meeting state to Leland Andrews another official of the American Export Lines who attended the meeting, if Mr. Markley works on the piers there would be a work stoppage?"

11. Q. "Prior to May 16, 1960, or during the week of May 16, 1960, did you have a conversation with Michael McNamara, concerning a work stoppage to be called on May 16, 1960, over the presence of James Markley from the Hoboken Terminal, as a security officer?"

12. Q. "Do you know Michael McNamara, Mr. Moody?"

13. Q. "Do you know Mr. William Murphy?"

14. Q. "Do you know Leland Andrews, Mr. Moody?"

15. Q. "Do you know Mr. Lyle Bul, Executive. Vice President, American Export Lines?"

16. Q. "Did you, at any time, either in Hudson County, in the State of New Jersey, or in the County of New York, in the State of New York, have any discussions, with any executives of the American Export Lines, concerning Mr. Markley's employment with that shipping company?"

17. Q. "Do you know whether Mr. Markley has been on the piers in the performance of his duties as a security officer of the American Export Lines, since his employment in May, 1960?"

At the time of the return of the order to show cause and on the same date, there was argued a motion to quash the

subpoena of John Moody, Sr., which was consolidated with the motion of the Waterfront Commission.

There were also motions made by defendant for a jury trial and for a bill of particulars on the charge of criminal contempt and a demand for interrogatories on the civil contempt charge, which said motions were all denied by this court.

It is on this 4th day of Dec., 1961, as appears in the opinion-memorandum of this court, ordered and adjudged that defendant, John Moody, Sr., is guilty of both criminal and civil contempt, and it is the sentence of this court that said defendant be fined $50.00 and sentenced for a period of 30 days, and a warrant to issue accordingly.

It is Further Ordered that the subpoena is to be obeyed and performed by the giving of responsive answers to the aforesaid questions before the members of the Waterfront Commission of New York Harbor, or their designees, appointed pursuant to the provisions of Sec. 3—Art. III of the Waterfront Commission Act (N. J. S. 32:23-9), and that he stand committed to the Hudson County Jail until he has complied with this paragraph of this order, as well as until such fine has been paid.

It is Further Ordered and Adjudged that the execution of a warrant be stayed until the disposition of the appeal in this matter, bond having been heretofore posted pursuant to the order of this court.

Joseph L. Smith, *J. S. C.*

Appendix E—Judgments Below

Judgment (Re: William Murphy)

(Filed—December 4, 1961)

This matter being opened by Robert A. Pin, Esq., Attorney for the Waterfront Commission of New York Harbor, the moving party, in the presence of Harold Krieger, Esq., and Robert Wall, Esq., Attorneys for William Murphy, upon the return of an order of this court dated November 1, 1961, directing said William Murphy to show cause why he should not be adjudged guilty of criminal and civil contempt for failure to obey a subpoena issued by the Waterfront Commission of New York Harbor, an administrative agency, and in accordance with the opinion of this court dated November 22, 1961, defendant William Murphy was adjudged guilty of criminal and civil contempt in his failure to answer certain questions as required by the subpoena on the 27th day of October, 1961:—

1. Q. "Are you an official of the ILA, Independent?"
2. Q. "I direct your attention to a work stoppage that occurred on Monday, May 16, 1960 at Piers A, B, C, Hoboken, the American Export Lines Terminal. Did you have any prior knowledge that a work stoppage would occur Monday, May 16th at the said terminal?
3. Q. "Mr. Murphy, when did you first hear that a work stoppage was in progress at Piers A, B, and C, Hoboken? And I am referring to the May 16th, 1960 work stoppage."
4. Q. "Mr. Murphy, who were the persons that gave you the information about the work stoppage on

May 16, 1960 at the Hoboken Terminal of the American Export Lines?"

5. Q. "Mr. Murphy, did you, at any time, give orders to longshoremen or others such as shop stewards that a work stoppage was to take place on May 16, 1960 at the American Export Line Terminal in Hoboken?"

6. Q. "Mr. Murphy, do you know whether the work stoppage that took place on May 16, 1960 at the American Export Line Terminal was relating to the presence of one James Markley on the piers as a security officer?"

7. Q. "Mr. Murphy, did you have any conversation with any union officials of the I. L. A. prior to May 16, 1960 about the presence of James Markley on the Hoboken Terminal as a security officer?"

8. Q. "On May 16th, 1960, did you Mr. Murphy, have a conversation with one Leland Andrews concerning this work stoppage that took place on May 16, 1960 at the American Export Line Pier?"

9. Q. "Did you, in the conversation with Mr. Andrews on the 16th day of May, 1960, reach any agreement over the presence of Mr. Markley on the Hoboken Terminals of the American Export Lines in Hoboken?"

10. Q. "Mr. Murphy, on the morning of the 17th of May, 1960, were you on American Export Line Hoboken Terminal?"

11. Q. "Mr. Murphy, on May 17th, 1960, at the Hoboken Terminal of the American Export Line, did you have a conversation with one Michael MeNamara?"

12. Q. "Mr. Murphy, on the morning of May 17th, 1960 at the American Export Line Terminal in Hoboken, did you have a conversation with one Frank Rump?"

13. Q. "Mr. Murphy, on the morning of May 17th, 1960, did you have a conversation with one Carmine Bruno?"

14. Q. "Mr. Murphy, on the morning of May 17th, 1960, at the Hoboken Terminal, did you have a conversation with one Eric Lempke?"

15. Q. "Mr. Murphy, on the morning of May 17th, 1960 did you have a meeting with officials of the American Export Line at the Hoboken Terminal of the American Export Line?"

16. Q. "Did you, at that time, reach any agreement concerning the presence of Mr. Markley on the Hoboken Terminal as a security officer?"

17. Q. "Did you ever make any demand from any officer of American Export Line to fire Mr. Markley before the men went back to work?"

18. Q. "Did you tell any officer of the American Export Lines that the men would not go back to work until Mr. Markley was kept off the piers?"

19. Q. "Mr. Murphy, did you have a meeting with the Executive Vice-President of the American Export Line at the offices of the American Export Line at 39 Broadway in New York City in August, 1960?"

20. Q. "Mr. Murphy, did you, at that meeting with the Executive Vice-President of the American Export Line, state that if Mr. James Markley walked on Piers A, B and C in Hoboken, there would be a strike?"

21. Q. "Did you, Mr. Murphy, ever discuss or give any orders to any shop stewards or officials of your local to pull the men out of Piers A, B and C in the event Mr. Markley walked onto the piers in May of 1960 in the performance of his duty as a security officer for the American Export lines?"

22. Q. "Mr. Murphy, do you know now whether Mr. Markley has ever, since May, 1960, walked on the piers in Hoboken, New Jersey of the American Export Lines in connection with his duties as a security officer for that company?"

23. Q. "Mr. Murphy, do you know if Mr. Markley was at one time employed by this Commission in any capacity whatsoever?"

24. Q. "Mr. Murphy, did you, in August, 1960, tell the Executive Vice-President of the American Export Line that if Mr. Markley stepped on the piers there would be a walkout?"

25. Q. "In the event that Mr. Markley walked on the piers of Hoboken, New Jersey today on the American Export Lines, would you order the membership of the I. L. A. present there off the piers?"

At the time of the return of the order to show cause and on the same date, there was argued a motion to quash the subpoena of John Moody, Sr., which was consolidated with the motion of the Waterfront Commission.

There were also motions made by defendant for a jury trial and for a bill of particulars on the charge of criminal contempt and a demand for interrogatories on the civil contempt charge, which said motions were all denied by this court.

It is on this 4th day of December, 1961, as appears in the opinion-memorandum of this court, ORDERED and ADJUDGED that defendant, William Murphy, is guilty of both criminal and civil contempt, and it is the sentence of this court that said defendant be fined $50.00 and sentenced for a period of 30 days, and a warrant to issue accordingly.

IT IS FURTHER ORDERED that the subpoena is to be obeyed and performed by the giving of responsive answers to the aforesaid questions before the members of the Waterfront Commission of New York Harbor, or their designees, appointed pursuant to the provisions of Sec. 3-Art. III of the Waterfront Commission Act (N. J. S. 32:23-9), and that he stand committed to the Hudson County Jail until he has complied with this paragraph of this order, as well as until such fine has been paid.

IT IS FURTHER ORDERED and ADJUDGED that the execution of a warrant be stayed until the disposition of the appeal in this matter, bond having been heretofore posted pursuant to the order of this court.

JOSEPH L. SMITH,
J.S.C.

APPENDIX F

Statutes and Rules of Court

I.

N.J.S.A. 32:23-6 [*McKinney's Unconsol. Laws*, §6700bb]

" 'Compact' shall mean this compact and rules or regulations lawfully promulgated thereunder." (D5a)

N.J.S.A. 32:23-85(7) [*McKinney's Unconsol. Laws*, §6700tt-1(7)]

" 'Compact' shall also include any amendments or supplements to the waterfront commission compact to implement the purposes thereof adopted by the action of the legislature of either the state of New York or the State of New Jersey concurred in by the legislature of the other." (D5a) [The foregoing provision is not part of the compact as consented to by Congress in 1953]

N.J.S.A. 32:23-86(5) [*McKinney's Unconsol. Laws*, §6700tt-2(5)]:

"In addition to the powers and duties elsewhere prescribed in this act, the commission shall have the following powers:

* * * * * *

"To confer immunity, in the following manner: In any investigation, interview or other proceeding conducted under oath by the commission or any duly authorized officer, employee or agent thereof, if a person refuses to answer a question or produce evidence of any other kind on the ground that he may

be incriminated thereby, and notwithstanding such refusal, an order is made upon twenty-four hours' prior written notice to the appropriate attorney general of the state of New York or the state of New Jersey, and to the appropriate district attorney or prosecutor having an official interest therein, by the unanimous vote of both members of the commission or their designees appointed pursuant to the provisions of section three of article III of this act, that such person answer the question or produce the evidence, such person shall comply with the order. If such person complies with the order, and if, but for this subdivision, he would have been privileged to withhold the answer given or the evidence produced by him, then immunity shall be conferred upon him, as provided for herein.

"'Immunity' as used in this subdivision means that such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which, in accordance with the order by the unanimous vote of both members of the commission or their designees appointed pursuant to the provisions of section three of article III of this act, he gave answer or produced evidence, and that no such answer given or evidence produced shall be received against him upon any criminal proceeding. But he may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury or contempt committed in answering, or failing to answer, or in producing or failing to produce evidence, in accordance with the order, and any such answer given or evidence produced shall be admissible against him upon any criminal proceeding concerning such perjury or contempt.

"'Immunity' shall not be conferred upon any person except in accordance with the provisions of this subdivision. If, after compliance with the provisions of this subdivision, a person is ordered to answer a question or produce evidence of any other kind and complies with such order, and it is thereafter determined that the appropriate attorney general or district attorney or prosecutor having an official interest therein was not notified, such failure or neglect shall not deprive such person of any immunity otherwise properly conferred upon him." [32:23-86].

III.

R.R. 4:46-5(c)

"Where a statute provides that failure of a person to obey a subpoena or order of a public officer or administrative agency or a receiver, to testify, to answer a proper question, or to produce books, papers, documents or tangible things, or that misconduct on the part of a person attending a hearing, shall be punishable by the court in the same manner as like failure or misconduct is punishable in a case pending in the court, the matter shall be brought before the court by motion supported by affidavit, stating the circumstances. Upon the motion the court may issue an order to show cause, returnable in not less than 2 nor more than 10 days, requiring the person to show cause before the court why he should not be punished; or the court may issue an attachment. If the court determines that the failure or misconduct above mentioned was without justification, it may punish him as for a contempt of court."

Appendix F—Statutes and Rules of Court

N.J.S.A. 32:23-6:

"The failure of any witness, when duly subpoenaed to attend, give testimony or produce other evidence, whether or not at a hearing, shall be punishable by the superior court in New Jersey and the supreme court in New York in the same manner as said failure is punishable by such court in a case herein pending."

R.R. 4:87-1: Contempt in the Presence of the Court:

"A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record."

R.R. 4:87-2: Proceedings Upon Notice:

"Every other contempt, whether of a criminal or civil nature, shall be prosecuted on notice, and if it occurs in an action, it shall be prosecuted in the action in which it occurs. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense and shall state the essential facts constituting the contempt charged. Whether the contempt charged is criminal or civil in nature, the notice may be given by an order to show cause; and the person charged with contempt may, not later than 1 day before the return of such an order, or within such time as the court may allow, serve an answer or an answering affidavit, or he may plead orally at the hearing. In any cause in which the court determines that the contempt charged may be criminal in nature—

(a) The notice may be given orally by the judge in open court in the presence of the person charged with contempt or by an order of arrest, or, as stated, by an order to show cause.

(b) If the person charged with contempt gives to the clerk of the court a good and sufficient bond for his appearance at the hearing, approved by any one of the judges of the Appellate Division, he shall be admitted to bail pending the hearing.

(c) The court may designate as prosecutor of the proceeding, the Attorney General, the county prosecutor or any other attorney of this State.

(d) If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the consent of the person charged with contempt.

(e) If the substance of the charge is a violation of an order or judgment of the court, the judge who made the order or judgment is likewise disqualified, except that proceedings charging contempt of an order issued in aid of judgment or execution may be heard by the judge who made such order.

The procedure by attachment may be invoked in the case of witnesses or persons not parties to the action, but it is superseded in the case of parties. Interrogatories are not required.

Note: Effective September 9, 1953; paragraph (e) amended June 27, 1955 to be effective September 7, 1955. Formerly Rule 3:80-2, amended November 10, 1949; January 1, 1952."

IV.

N.J.S.:

"2A:84A-18. Definition of incrimination.

Rule 24.

Within the meaning of this article, a matter will incriminate (a) if it constitutes an element of a crime against this State, or another State *or the United States,* or (b) is a circumstance which with other circumstances would be a basis for a reasonable inference of the commission of a such a crime, or (c) is a clue to the discovery of a matter which is within clauses (a) or (b) above; provided, a matter will not be held to incriminate if it clearly appears that the witness has no reasonable cause to apprehend a criminal prosecution. In determining whether a matter is incriminating under clauses (a), (b) or (c) and whether a criminal prosecution is to be apprehended, other matters in evidence, or disclosed in argument, the implications of the question, the setting in which it is asked, the applicable statute of limitations and all other factors, shall be taken into consideration. L. 1960, c. 52, p. §18.

2A:84A-19. Self-incrimination: exceptions

Rule 25.

Subject to Rule 37 every natural person has a right to refuse to disclose in an action or to a police officer or other official any matter that will incriminate him or expose him to a penalty or a forfeiture of his estate • • •

• • •

2A:84A-32. Effect of error in overruling claim of privilege

Rule 40.

* * *

(2) If a witness refuses to answer a question, under color of a privilege claimed pursuant to Rules 23 through 38, after the judge has ordered the witness to answer, and a contempt proceeding is brought against the witness, the court hearing the same shall order it dismissed if it appears that the order directing the witness to answer was erroneous. L. 1960, c. 52, p. §32." (Emphasis supplied.)

V.

N.J.S.A. 32:23-10 (8, 11) [*McKinney's Uncol. Laws*, §§6700 *dd* (8, 11)]:

"In addition to the powers and duties elsewhere prescribed in this compact, the commission shall have the power:

* * *

"8. By its members and its properly designated officers, agents and employees, to administer oaths and issue subpoenas throughout both states to compel the attendance of witnesses and the giving of testimony and the production of other evidence;

* * *

"11. To make investigations, collect and compile information concerning waterfront practices generally within the port of New York district and upon all matters relating to the accomplishment of the objective of this compact;"

N.J.S.A. 32:23-62 [*McKinney's Unconsol. Laws*, §6700 *nn* (1)]:

> "The failure of any witness, when duly subpoenaed to attend, give testimony or produce other evidence, whether or not at a hearing, shall be punishable by the superior court in New Jersey and the supreme court in New York in the same manner as said failure is punishable by such court in a case therein pending."

N.J.S.A. 32:23-85 (4) [*McKinney's Unconsol. Laws*, §6700 *tt*-1]:

> " 'Witness' shall mean any person whose testimony is desired in any investigation, interview or other proceeding conducted by the commission pursuant to the provisions of this act."

N.J.S.A. 32:23-88 [*McKinney's Unconsol. Laws*, §6700tt-4]:

> "Any person who, having been duly sworn or affirmed as a witness in any investigation, interview or other proceeding conducted by the commission pursuant to the provisions of this act, shall wilfully give false testimony shall be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars or imprisonment for not more than one year or both." (D38a) [The foregoing provision is not part of the compact as consented to by Congress in 1953]

N.J.S.A. 32:23-89 [*McKinney's Unconsol. Laws*, §6700tt-5]:

> "The commission may maintain a civil action on behalf of the state against any person who violates or

attempts or conspires to violate any provision of the compact or who fails, omits or neglects to obey, observe or comply with any order or direction of the commission, to recover a judgment for a money penalty not exceeding five hundred dollars for each and every offense. Every violation of any such provision, order or direction shall be a separate and distinct offense, and, in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct offense. * * *" (D38a) [The foregoing provision is not part of the Compact as consented to by Congress in 1953]

N.J.S.A. 32:23-90 [*McKinney's Unconsol. Laws*, §§6700tt-6]:

"The commission may maintain a civil action against any person to compel compliance with any of the provisions of the compact, or to prevent violations, attempts or conspiracies to violate any such provisions, or interference, attempts or conspiracies to interfere with or impede the enforcement of any such provisions or the exercise or performance of any power or duty thereunder, either by mandamus, injunction or action or proceeding in lieu of prerogative writ." (D38a) [The foregoing provision is not part of the Compact as consented to by Congress in 1953]

VI

N.J.S.A. 32:23-10(12) [*McKinney's Unconsol. Laws*, 6700dd(12).]:

"* * * the commission shall have power"

* * *

"12. To advise and consult with representatives of labor and industry and with public officials and

agencies concerned with the effectuation of the purposes of this compact, upon all matters which the commission may desire, including but not limited to the form and substance of rules and regulations, the administration of the compact, maintenance of the longshoremen's register, and issuance and revocation of licenses."